

**REPORT TO THE MONTANA  
ENVIRONMENTAL QUALITY COUNCIL**

**ENVIRONMENTAL ENFORCEMENT  
AND COMPLIANCE FOR FY1999 AND FY2000**

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

**August 25, 2000**

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## SECTION 1. - INTRODUCTION

This report is submitted to the Environmental Quality Council (EQC) by the Department of Environmental Quality (DEQ) to meet the reporting requirements prescribed in § 75-1-314, MCA. The period covered by this report covers July 1, 1998 through June 30, 2000. Section 2 describes the compliance assistance and enforcement activities that occurred during the reporting period. Report information is organized by the regulatory bureaus within the Permitting and Compliance Division and the Remediation Division and the statutes administered by each. Summary tables which depict complaint response and formal enforcement activities conducted by the Enforcement Division are included within each bureau's segment.

## SECTION 2. – COMPLIANCE AND ENFORCEMENT ACTIVITIES

### *I. PERMITTING AND COMPLIANCE DIVISION*

#### **A. COMMUNITY SERVICES BUREAU**

**Montana Solid Waste Management Act, 75-10-201, et seq., MCA**

**Montana Megalandfill Siting Act, 75-10-901, et seq., MCA**

**Montana Infectious Waste Management Act, 75-10-1001, et seq., MCA**

**Septic Disposal Laws, 75-10-1201, et seq., MCA**

#### **1. Program Description**

The Solid Waste Regulatory and Licensing Programs regulate the proper disposal of wastes in Montana. These wastes include municipal solid waste, commercial and industrial non-hazardous wastes, infectious medical wastes, used tires, construction and demolition debris, and septic tank pumpings. Some wastes are excluded from regulation because they are either self-regulating or are regulated as part of another program. These wastes include on-farm agricultural wastes, wastes from the operation of a mine, mill, smelter, electrolytic reduction facility, electric generating facility, or petroleum refining facility. Wastes from the drilling and production of oil and natural gas are also exempt, as are remediation wastes under State and Federal Superfund Programs.

#### **2. Activities and Efforts Taking Place to Promote Compliance Assistance and Education**

##### *Compliance Assistance Inspections*

The major outreach efforts conducted by the Solid Waste Program are the site visits to proposed facilities and inspections of license holders. Regulatory program goals include visiting every solid waste facility at least once a year, major landfills at least twice a year, and problem facilities as often as necessary to achieve compliance. The Licensing Program staff visits every proposed solid waste facility and actively encourages prospective applicants to attend pre-submittal scoping meetings to facilitate the licensing process. Septic tank pumpers are subject to limited inspections due to lack of program funding.

##### *Technical Assistance Training*

The major formal educational outreach is a series of regular training sessions conducted for landfill operators organized by the Montana State University Extension Service through a contract from the Solid Waste Program with the Montana Association of Counties. The program staff participates or instructs at all of the training sessions. The staff of both programs spends considerable time in answering questions over the telephone or by email. The Pollution Prevention Program of the Pollution Prevention and Assistance Division provides informational materials, public outreach, and telephone contact information on waste reduction, waste minimization, and household hazardous waste questions.

### **3. Size and Description of The Regulated Community**

There are currently 268 licenses issued by the Solid Waste Program in Montana, as compared to 248 in FY99. These include:

Table 1. List of Solid Waste Licenses Issued in Montana in FY99 and FY00

	FY99	FY00
Burn Sites	11	10
Compost Sites	3	2
Infectious Waste Sites	1	1
Class II Landfills (Municipal solid waste landfills)	32	31
Class III Landfills (Inert waste landfills & Burns sites)	47	64
Class IV Landfills (Construction & Demolition waste landfills)	0	2
Incinerators	1	1
Resource Recovery Facilities	3	2
Sewage Sludge Sites	1	1
Soil Treatment Facilities	10	4
Transfer Stations	8	10
Septic Tank Pumpers	131	140
Septage Sites (Used under pumper license)	165	170

### **4. Number, Description, Method of Discovery, and Significance of Non-compliances, Including Those that are Pending**

In FY99 and FY00, the Solid Waste Program conducted 168 solid waste facility inspections. Of these, 81 major and 54 minor violations were noted during the inspections. Some facilities had multiple violations and some had none. The majority of the violations were actual environmental threats, such as inadequate cover, poor run-off controls and litter problems. Seven landfills are in corrective measures for groundwater contamination and another four landfills are required to do additional sampling because of low levels of groundwater contamination. Four landfills require methane gas control measures. The increased numbers of landfill inspections between FY99 and FY00 was a result of an additional solid waste inspector being added to the staff.

Table 2. Number of Landfill Violations and Inspections for 1999 through 2000.

	1999	2000
Major Violations	31	50
Minor Violations	18	36
Total	49	86
Landfill Inspections	79	89

Table 3. Status and number of complaints related to the Solid Waste Management Act managed by the Enforcement Division during FY99-FY00.

Status	Solid Waste
Active: under investigation by ENFD	12
Active: under investigation by program	11
Investigated and closed by ENFD	81
Investigated and closed by program	15
Referred to another agency	12
Enforcement action requested for resolution	7
Total	138

Table 4. Status and number of complaints and spills related to the Septic Disposal Law managed by the Enforcement Division during FY99-FY00.

Status	Septic Pumpers
Active: under investigation by ENFD	0
Active: under investigation by program	0
Investigated and closed by ENFD	6
Investigated and closed by program	4
Referred to another agency	0
Enforcement action requested for resolution	0
Total	10

**5. Description of How the Department had Addressed the Non-compliance Listed Above and Inclusion of Non-compliances that are Pending**

Most landfills resolve problems as soon as they are noted in an inspection report. The Solid Waste program emphasizes education and assistance over enforcement. Only two landfills have had their licenses revoked for numerous solid waste violations since 1991.

## 6. Enforcement Activities

Table 5. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Solid Waste Management Act, Montana Megalandfill Siting Act, Montana Infectious Waste Management Act, and Septic Disposal Laws.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Montana Megalandfill Siting Act	0	0	0	0	0	0	0	0	0	0	0	0	0
Septic Disposal Laws	0	0	0	0	0	0	0	0	0	0	0	0	0
Infectious Waste Management Act	0	0	0	0	0	0	0	0	0	0	0	0	0
Solid Waste Management Act	15	2	4	9	5	0	0	0	0	0	10	0	0
Total	15	2	4	9	5	0	0	0	0	0	10	0	0

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 6. Acts about the individual enforcement actions that were initiated during the biennium under the Montana Solid Waste Management Act. There were taken under the Montana Megalandfill Siting Act, Montana Infectious Waste Management Act, or the Septic Disposal Laws.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
SW	11/22/99		Development	Mister M Disposal.	Fergus	Failure to provide financial assurance, failure to pay fees		
SW	04/10/00		Development	Hartland Farms	Custer	Failure to pay fees		
SW	06/05/00		Development	Paul Siewert	Yellowstone	Failure to license		
SW	06/16/00		Development	Shumaker Excavation & Trucking	Cascade	Failure to comply with license requirements		
SW	06/23/00		Development	Yellowstone Country Club	Yellowstone	Failure to pay fees		
SW	01/07/96	CIVIL	Under Order	MTS Tire Recyclers, Inc.	Stillwater	Failure to license, failure to pay fees	\$467,000	
SW	05/20/97	CIVIL	Under Order	Mister M Disposal	Fergus	Failure to provide financial assurance	\$ 23,250	
SW	03/10/99	ADM	Under Order	Sanitation, Inc.	Fergus	Failure to comply with license requirements		
SW	04/27/00	CIVIL	Under Order	Ronald D. Clapper	Gallatin	Failure to license		
SW	06/08/99	Civil	Under Order	G. F. "Skip" Leninger	Ravalli	Failure to license		
SW	06/23/99	ADM	Under Order	Rocky Rail Services	Missoula	Failure to license		\$3,000
SW	09/02/99	Civil	Under Order	Lela Sutton	Flathead	Failure to license		
SW	11/29/99	ADM	Under Order	Sanders County Solid Waste Refuse Disposal District	Sanders	Failure to comply with license requirements		
SW	11/29/99	ADM	Under Order	Big Crush Gravel	Ravalli	Failure to license		

<sup>1</sup> SW = Solid Waste Management Act

## **Motor Vehicle Recycling and Disposal Program**

### **Montana Motor Vehicle Recycling and Disposal Act, 75-10-501, et seq., MCA**

#### **1. Program Description**

The Montana Motor Vehicle Recycling and Disposal Program administers and enforces the Montana Motor Vehicle Recycling and Disposal Act. This Act requires the Department of Environmental Quality to license and regulate motor vehicle wrecking facilities (MVWFs) and to administer a program for the control, collection, recycling and disposal of junk vehicles and component parts. The state program (Program) provides annual financial grants to counties to administer the program on a local level. The Program oversees the operation of the county programs and approves their annual budgets and expenditures.

#### **2. Activities and Efforts Taking Place to Promote Compliance and Assistance**

Program efforts and activities promoting compliance and providing assistance fall into several general categories identified and discussed below:

##### *Compliance Assistance Inspections*

MVWFs and motor vehicle graveyards are usually inspected for compliance each year. The inspections include a detailed assessment of the adequacy of the facility's shielding to screen the junk vehicles and component parts from public view as required in the laws and rules and a review of the facility's records. Any non-compliance noted during the inspection is recorded in the inspection report and brought to the operator's attention and scheduled for correction. If the violation continues unabated to the next scheduled inspection or beyond the scheduled date for compliance, enforcement action may be required.

##### *Technical Assistance Training*

Each county program has been provided a Motor Vehicle Recycling and Disposal Program REFERENCE AND GUIDANCE MANUAL. This manual is comprehensive. Annual training is provided to all county programs. The training is usually offered in Billings and in Helena.

##### *Internet*

Although not a newsletter, the Program does have an Internet Home-Page. One goal is to provide interactive forms so they can be completed and re-submitted using the Web. Progress has been made during this biennium in this effort.

#### **3. Size and Description of The Regulated Community**

The total size of the regulated community is any Montana citizen possessing a junk vehicle, plus any governmental or commercial entity active in or possessing junk vehicles. The following chart provides a synoptic description:

Table 7. Violations discovered, by method, 1999 and 2000

GROUP	TOTAL	INSPECTIONS	CITIZEN COMPLAINTS OR REFERRALS	PORTION IN COMPLIANCE TO-DATE
CITIZENS FY98	884,000		1,853	99.9%
COUNTIES FY99	52	48		**100%
COUNTIES FY00	52	48		**100%
MVWF FY99	185	203		*92%
MVWF FY00	187	215		*95%

\*Note more than one inspection may have been performed per MVWF.

\*\* Violations discovered at county were immediately corrected leading to 100% compliance.

#### *Montana Citizens*

Any Montana citizen possessing one or more junk vehicles regardless of ownership, shall shield or remove the vehicle(s)... Approximately 61,880 vehicles may have been retired in FY98 (7% of population). Of those vehicles **1,853** complaints have been received by the state or county and were dealt with at the county or state level. Of the complaints received 1,742 or **94% were resolved**.

#### *County Motor Vehicle Graveyards*

Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. Ten of 56 counties have merged with other counties or districts. There are 52 licensed county motor vehicle graveyards.

FY99- 48 inspections were conducted and seven violations were found or 85% of the facilities inspected were in compliance. Violations were minor and immediately corrected.

FY00- 48 inspections were conducted and nine violations were found or 81% of the facilities inspected were in compliance. Violations were minor and immediately corrected.

**Note:** all County Motor Vehicle Graveyards corrected their violations leading to **100% compliance** and were reissued annual licenses.

#### *Motor Vehicle Wrecking Facilities (MVWFs)*

In FY99 there were 185 licensed MVWFs. 203 inspections of MVWFs were conducted and of those 79 were found to have violations: or 61% were in compliance.

In FY00 there were 187 licensed MVWFs. 215 inspections of MVWFs conducted and of those 93 were found to have violations: or 57% were in compliance. **95% of facilities are in compliance.**

**Note:** Violations were corrected by the respective MVWFs, leading to the overall compliance rates shown in the table above.

**4. Number, Description, Method of Discovery, and Significance of Non-compliance, Including Those that are Pending**

It is important to note that all violations are aesthetic, licensing, or record keeping issues. When contamination issues (water or ground) present themselves i.e., fluid removal, staff alert other appropriate programs within DEQ or other agencies as appropriate. 1,853 citizen complaints were investigated by County or State Program staff. Routine and complaint triggered inspections discovered moderate or minor violations in 92% of the cases. Some investigations lead to formal enforcement activities, with actions on-going. Some formal enforcement actions, initiated as far back as 1994, are still on-going and are anticipated to be concluded during FY01.

Table 8. Status and number of complaints related to the Motor Vehicle Recycling and Disposal Act managed by the Enforcement Division during FY99-FY00.

Status	Junk Vehicle
Active: under investigation by ENFD	2
Active: under investigation by program	18
Investigated and closed by ENFD	8
Investigated and closed by program	3
Referred to another agency	4
Enforcement action requested for resolution	1
Total	36

**5. Description of How the Department had Addressed the Non-compliance Listed Above and Inclusion of Non-compliances that are Pending**

*Citizens (Individuals)*

County Level Activity:

Citizen Contacts FY99:	4,067 (45% or 1,853 were violation issues)
Number of continuing violations	250 (13% at County level)
Number referred for legal action	64 (3% at County level)

*Citizens (FY00 data is not available – County Level)*

State Level:

FY99 Number referred for legal action	5
FY00 Number referred for legal action	2
FY99 carryover	<u>4</u>
FYE2000 Total	6

*Motor Vehicle Wrecking Facilities (FY99)*

Informal Warning (IW)	
MVWF Violations	93
Individual	<u>5</u>
Total	98

Compliance Plan Requested (CPR)	
MVWF Violations	17
Individual	<u>5</u>
Total	22

*Motor Vehicle Wrecking Facilities (FY00):*

Informal Warning (IW)	
MVWF Violations	79
Individual	<u>2</u>
Total	81

Compliance Plan Requested (CPR)	
MVWF	11
Individual	<u>2</u>
Total	13

## 6. Enforcement Activities

Table 9. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Motor Vehicle Recycling and Disposal Act.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Motor Vehicle Recycling & Disposal Act	10	7	1	2	0	0	0	0	0	0	8	0	2
Total	10	7	1	2	0	0	0	0	0	0	8	0	2

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 10. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Motor Vehicle Recycling and Disposal Act.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
JV	05/20/97	CIVIL	Closed	Frank Leskovec III	Custer	Failure to license, failure to shield	\$ 1,000	
JV	09/24/97	CIVIL	Closed	Kaczmarek Farms	Toole	Failure to license, failure to shield		
JV	10/18/90	CIVIL	Under Order	D. J. Towing and Repair	Yellowstone	Failure to license, failure to shield	\$137,500	
JV	04/02/97	CIVIL	Under Order	Rod and Linda Robinson	Toole	Failure to license, failure to shield	\$ 68,400	
JV	05/20/97	CIVIL	Under Order	Tony and Debbie Kelsey	Mineral	Failure to license, failure to shield, failure to maintain records	\$ 74,400	
JV	06/30/98	CIVIL	Under Order	Jenkins Garage	Gallatin	Failure to license, failure to shield, failure to maintain records	\$ 1,000	
JV	02/08/99	ADM	Under Order	Monty's Auto Salvage	Powell	Failure to shield		
JV	10/08/99	ADM	Under Order	Robert Crowe	Jefferson	Failure to license, failure to shield		
JV	10/26/99	CIVIL	Under Order	M. D. Doctor Salvage	Musselshell	Failure to shield, failure to report	\$ 1,000	

<sup>1</sup> JV = Motor Vehicle Recycling and Disposal Act

**Montana Public Water Supply Laws, 75-6-101, et seq., MCA**  
**Water Treatment Plant Operators Laws, 37-42-101, et seq., MCA**

**1. Program Description**

The Public Water Supply Section (PWSS), in the Community Services Bureau, implements and enforces the Montana Public Water Supplies' Distribution and Treatment Law, the Water Treatment Plant Operators Law, and has primary enforcement authority (primacy) for implementation and enforcement of the federal Safe Drinking Water Act (SDWA - 42 U.S.C. 300f et. seq.). There are three programs in the PWSS: The Engineering Services Program, the Field Services Program, and the Water and Wastewater Operator Certification Program. As the primacy agency in Montana, the PWSS regulates approximately 2,020 public water supplies. Public water supplies are defined in Title 75, Chapter 6 as any supply serving 15 or more service connections or 25 or more people for at least 60 days of the calendar year. Public water suppliers must comply with stringent monitoring and treatment requirements. Title 37, Chapter 42, defines a water or wastewater operator as the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant. The statute requires owners of certain public water and wastewater facilities to retain the services of a certified operator. Approximately 1,160 public water and wastewater system owners employ approximately 1,600 certified operators in Montana.

The PWSS also implements training, testing, and continuing education services for water and wastewater operators; provides technical assistance to water system operators and managers; helps resolve water system contamination problems; reviews plans for water and wastewater improvements to ensure conformance with minimum water system design and construction standards; and provides general assistance to the public and other state and federal agencies. Reports for the implementation of Title 75, Chapter 6 and Title 37, Chapter 42 are addressed separately below.

**2. Activities and Efforts Taking Place to Promote Compliance and Assistance**

*Public Water Supplies, Distribution and Treatment*

Many of these section activities overlap with section activities under Title 37, Chapter 45. Section staff participates in a very active statewide operator training program that also involves other technical assistance providers. The program emphasizes operator training, technical assistance, and proper water treatment and monitoring. These activities promote public health protection through preventive measures.

The section performs routine sanitary surveys (inspections) of public water systems to identify possible system deficiencies that may affect compliance. The section also provides technical assistance to water suppliers to address specific compliance issues. Some technical assistance is provided in the office or via the telephone, and some is provided directly on site, depending upon circumstances. Plan review is performed prior to construction of system improvements to ensure compliance with minimum design standards. Conformance with minimum design standards helps to ensure a long-term life of system components, and minimizes the possibility of non-compliance problems related to system construction. These activities are summarized in Table 11 below.

Table 11. Summary of Technical Assistance Efforts in the PWSS

Activity	Calendar Year 1998	Calendar Year 1999
Sanitary Surveys (Inspections)	516	440
Technical Assistance Site Visits	230	245
Training/Education (staff-days of training)	70	70
Plan Review	388	435

#### *Water Treatment Plant Operators*

During FY99 and FY00, the Water and Wastewater Operator Certification (WWOC) Program has undertaken the following activities to promote compliance with the statutory goals of the program:

#### *Information/Education:*

Certification of operators: Processed 658 operator applications, certified 450 new operators, and processed renewals for 3,187 water and wastewater operator certifications.

Training and information: Trained new operators on certification requirements at six (6) water schools; continually explored new technology (i.e., CD-ROMs and Internet) to make training more accessible to operators; and supported new operator training in conjunction with examination sessions being held at small system training, DEQ water schools, in DEQ offices, and at Montana Rural Water Systems and Montana Association of Water and Sewer Systems conferences.

Examinations: Held 87 examination sessions. Began process to contract with Association of Boards of Certification to update wastewater examinations.

#### *Technical Assistance:*

Outreach: Spoke at eight (8) conferences or water schools and contributed to seven (7) Montana and regional newsletters.

Peer Review: Held seven (8) Water and Wastewater Operator Advisory Council meetings, and eight (8) Continuing Education Credit Review Committee meetings.

### **3. Size and Description of the Regulated Community**

#### *Public Water Supplies, Distribution and Treatment*

The PWSS regulates approximately 2,020 public water supply systems. A community water system is a public water supply system which serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. There are approximately 650 community systems. A transient water system means a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least six months a year (restaurants, bars, campgrounds, motels, etc.). There are approximately 1,150 transient systems. A non-transient water system is a public water supply system that is not a community water system and that regularly serves at least 25 of the same persons for at least six months per year (businesses, schools). There are approximately 220 non-transient systems. Public systems in Montana serve up to 876,000 people daily.

#### *Water Treatment Plant Operators*

Although exact numbers vary continually, there are approximately 630 community public water supply systems and 230 non-transient public water supply systems that must retain the services of a certified

operator. There are presently 298 public sewage systems that must retain the services of certified operators.

The requirement for certified operators at community public systems has been in effect since 1967, but the requirement for operators at non-transient systems went into effect on July 1, 1998. The process to certify non-transient operators began in November 1997, and 206 of the 230 currently identified non-transient systems already have certified operators.

#### **4. Number, Description, Method of Discovery, and Significance of Non-compliance, Including Those that are Pending**

##### *Public Water Supplies, Distribution and Treatment*

Introduction: The data presented in this section are taken from annual compliance reports prepared by the PWSS for calendar years 1998 and 1999. These annual reports are a requirement of the SDWA. The data were not recalculated for the time period July 1, 1998 through June 30, 2,000 because the information in these reports should effectively provide the same information.

Non-compliance is normally discovered through submission by the water supplier of sample results and self-monitoring reports, or through the failure to submit this required information. Non-compliance is also discovered through routine inspections, and by direct contact with system operators or owners. The PWSS attempts to notify water suppliers of every violation in writing, and offers instructions and technical assistance to help them return to compliance. Amendments to the SDWA in 1986 resulted in the creation of voluminous, complex new monitoring and treatment requirements for public water suppliers. Although the number of violations has greatly increased since implementation of these regulatory requirements, the quality of water served by public water suppliers has dramatically improved through implementation of the requirements. Public notification is required for all violations.

This report addresses only major monitoring and reporting violations and significant non-compliance (SNC). EPA has defined major monitoring and reporting violations for various regulatory requirements. A major violation would create a possible public health risk due to the lack of adequate water quality monitoring. Significant non-compliance status is assigned to water suppliers who have a history of violations, or who have treatment violations that may directly affect public health.

"Phase 2/5" Rules. Tables 12 and 12a show the violations of maximum contaminant levels (MCLs) and monitoring requirements for synthetic organic chemicals (SOCs), volatile organic chemicals (VOCs), inorganic chemicals (IOCs), and for nitrate in calendar years 1998 and 1999, respectively.

Most of the MCL violations are for naturally occurring fluoride and nitrate, but some of the nitrate violations may be the result of contamination from improper sewage disposal or agricultural practices. Most of the MCL violations have been addressed through treatment or through the use of alternate water sources.

Monitoring violations resulted from late samples, missed samples, improper sampling procedures, or confusion over complex monitoring requirements. As mentioned, public notification is required for all violations.

Table 12. Violations of the Phase 2 and Phase 5 Rules in Calendar Year 1998

Contaminant Type	MCL (mg/l)	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
		Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
VOCs		0	0			192	152
SOCs		0	0			28	24
IOCs		7	4			175	153
NO3/NO2	10	10	10			521	470
Subtotal		17	14			916	799

Table 12a. Violations of the Phase 2 and Phase 5 Rules in 1999

Contaminant Type	MCL mg/l	MCL'S		Treatment Techniques		Significant Monitoring/Reporting	
		Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations
VOCs		0	0			12	12
SOCs		0	0			0	0
IOCs		2	2			2	2
NO3/NO2	10	2	2			401	401
Subtotal		4	4			415	415

Total Coliform Rule. Tables 13 and 13a show the violations of the MCLs and monitoring requirements for the TCR in 1998 and 1999, respectively.

Because the presence of fecal coliform bacteria can indicate contamination from the feces of warm-blooded animals, MCL violations are categorized as acute MCL violations when the routine and/or the check sample(s) are positive for fecal coliform bacteria. Boil water orders are issued when an acute MCL violation occurs. Health advisories are issued when non-fecal coliform bacteria are found in the routine sample and in check samples. Most of these violations result from improper disinfection of water systems following repairs, inadequately protected water sources, or biofilms that exist within water distribution systems. Most of the monitoring violations are the result of late samples or missed samples.

Table 13. Violations of the Total Coliform Rule in calendar year 1998

Violation Type	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Acute MCL	23	23				
Non-Acute MCL	90	87				
Major routine and follow up monitoring					396	260
Sanitary survey						
Subtotal	113	110			396	260

Table 13a. Violations of the Total Coliform Rule in calendar year 1999

Violation Type	MCL'S		Treatment Techniques		Significant Monitoring/Reporting	
	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations
Acute MCL Violation	9	9				
Non-Acute MCL Violation	144	142				
Major routine and follow up monitoring					902	570
Subtotal	153	151			902	570

**Surface Water Treatment Rule.** Tables 14 and 14a show the violations of the treatment technique requirements (filtration and disinfection), and of the monitoring requirements of the SWTR.

Treatment technique violations are typically the result of inadequate filtration or disinfection when water quality or water demands are extreme. Many of the water supply owners that failed to install filtration equipment experienced difficulty in securing funding for the necessary improvements. DEQ has issued administrative orders requiring these owners to install filtration treatment. Most of the water suppliers who failed to monitor their water treatment processes adequately were very small water systems.

Table 14. Violations of the Surface Water Treatment Rule in calendar year 1998

1998	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Filtered Systems						
Monitoring, Routine/repeat					59	9
Treatment techniques			57	10		
Unfiltered Systems						
Monitoring, Routine/repeat					31	9
Failure to filter			10	10		
Subtotal			67	20	90	18

Table 14a. Violations of the Surface Water Treatment Rule in 1999

	MCL'S		Treatment Techniques		Significant Monitoring/Reporting	
	Number Of Violations	Number of Systems With Violations	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations
Surface Water Treatment Rule						
Filtered Systems						
Monitoring, Routine/Repeat					29	6
Treatment Techniques			43	8		
Unfiltered Systems						
Monitoring, Routine/Repeat					41	12
Failure To Filter			0	0		
Subtotal			43	8	70	18

**Lead and Copper Rule.** Tables 15 and 15a show monitoring and treatment technique violations of the LCR in 1998 and 1999, respectively.

Lead and copper exceedances result from corrosion of lead and copper in plumbing components, not from contamination of source water. Many of the suppliers who failed to install a treatment system did so because of uncertainties regarding appropriate treatment chemicals and/or treatment methods. Each water source is unique, and the appropriate corrosion control chemical or method must be selected carefully.

Most of the monitoring violations resulted from late or missed samples, or from confusion over complex monitoring requirements. Many water supply owners failed to provide the required educational materials to the public regarding lead or copper exceedances, or failed to notify DEQ that they had provided the required public education materials.

Table 15. Violations of the Lead and Copper Rule in calendar year 1998

Violation Type	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Initial lead & copper tap M/R					114	45
Follow-up or routine lead & copper tap M/R					136	68
Treatment Installation			64	60		
Public education			53	53		
Subtotal			117	113	250	113

Table 15a. Violations of the Lead and Copper Rule in calendar year 1999

VIOLATION TYPE	MCL'S		Treatment Techniques		Significant Monitoring/Reporting	
	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations
Initial lead and copper tap M/R					118	37
Follow-up or routine lead and copper tap M/R					221	111
Treatment Installation			75	75		
Public Education			34	34		
Subtotal			109	109	339	148

**Radionuclides Rule.** Tables 16 and 16a show monitoring violations for radionuclides in 1996 and 1997. Only community water supplies must be sampled for radionuclide testing. No current MCL violations exist. The number of monitoring violations for radium is unknown because radium testing is not required unless the gross alpha test results indicate when and if radium testing is necessary. Most community water supplies have been sampled at least once for these radionuclides, but many failed to sample or report during 1996 and 1997.

Table 16. Violations of the Radionuclides Rule in calendar year 1998

Violation Type	MCLs		Treatment Techniques		Significant Monitoring/Reporting	
	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations	Number of Violations	Number of Systems With Violations
Gross Alpha	0	0			257	257
Subtotal	0	0			257	257

Table 16a. Violations of the Radionuclides Rule in calendar year 1999

	MCL'S		Treatment Techniques		Significant Monitoring/Reporting	
	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations	Number Of Violations	Number Of Systems With Violations
Radionuclide MCLs						
Gross Alpha	0	0			210	210
Subtotal	0	0			210	210

### *Water Treatment Plant Operators*

During FYs 99-00, 227 contacts were made with water system owners, informing them of non-compliance with the certification rules and requirements. These contacts are illustrated in Table 17 below. Most violations in the WWOC program are discovered through review of database records, inspections, citizen complaints, and notification by the system owner or operator. A summary of public systems in compliance with certification requirements is shown in Table 18.

Table 17. Compliance Contacts in the WWOC Program FY99 and 00

Compliance Contacts			
Type of Contact	FY99	FY00	Totals
Warning letter	135	42	177
Letter of violation	39	2	41
Sent to Enforcement	5	4	9
Totals	179	48	227

Table 18. Public Systems in Compliance with Certification Requirements in FY99 and 00

Compliance with Operator Certification Requirements in Title 37, Chapter 42				
Type of System	Number of systems	Systems in compliance	Systems out of compliance	Percent out of compliance
Community Public Water	634	603	31	5%
Non-Transient Non-Comm PWS	230	206	24	10%
Public Wastewater	298	259	39	13%

Table 19. Status and number of complaints related to the Public Water Supply Law managed during FY99-FY00.

Status	Public Water Supply
Active: under investigation by ENFD	4
Active: under investigation by program	6
Investigated and closed by ENFD	15
Investigated and closed by program	17
Referred to another agency	1
Enforcement action requested for resolution	1
Total	44

## 5. Description of How the Department Has Addressed the Non-compliance

### *Public Water Supplies, Distribution and Treatment*

There are many technical violations because of complex new regulatory requirements. Most of these do not result in significant public health risks, but water suppliers are notified of virtually every violation and given instructions on how to return to compliance. Water suppliers have also been given instructions regarding public notification for every violation.

Informal enforcement efforts are also implemented through phone calls, office visits, field visits (technical assistance), training sessions, and through contracted technical assistance. In order to promote uniform responses to violations, the PWSS has implemented enforcement response guides for each rule discussed above. The section has also addressed old backlogged enforcement cases in order to proceed with new non-compliance issues. Particular attention is given to significant noncompliers (SNCs). Once a water supply is identified as a SNC, more formal enforcement actions are implemented (see the discussion of formal enforcement prepared by the Enforcement Division).

Most water suppliers are determined to remain in compliance. Compliance with regulatory requirements protects consumers from unacceptable health risks, promotes public confidence in the

water supplier, eliminates the possibility of penalties, and may result in reduced monitoring requirements.

#### *Water Treatment Plant Operators*

Most violations in the WWOC program are discovered through review of database records, inspections, citizen complaints, and notification by the system owner or operator. When a system is found to be out of compliance, the system owner is notified of the regulations requiring certification in a warning letter and given until the next exam cycle to either identify a certified operator or to get someone certified. If the requirements in the warning letter are not met, a letter of violation is sent by certified mail giving the system owner 30 days to meet the requirements. If the supplier does not address the requirements of the violation letter, an enforcement request is submitted to the Enforcement Division. Administrative penalties may be assessed against systems found to be in violation of the relevant operator certification requirements contained in regulations adopted pursuant to the Public Water Supplies, Distribution and Treatment Law, Title 75, Chapter 6.

### **6. Quantitative Trend Information**

#### *Public Water Supplies, Distribution and Treatment*

In 1986, Congress amended the SDWA to require the Environmental Protection Agency to adopt many new monitoring and treatment regulations for public water supplies. Because of the complexity and volume of the new requirements, the number of violations has increased dramatically since 1986. However, the quality of drinking water provided to the public has improved even more dramatically because of the new requirements.

While improvements in compliance are obviously necessary, resources are regularly prioritized to devote attention to correcting the most significant public health risks.

#### *Water Treatment Plant Operators*

The number of systems in non-compliance went up in FY99 with the addition of 227 non-transient non-community (NTNC) systems that are now required to have certified operators. However, 89% of the NTNC systems are already in compliance at the time of this report. Compliance tracking should be easier in the future with the additional WWOC staff and the proposed new centralized database.

## 7. Enforcement Activities

Table 20. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Public Water Supply Law and Water Treatment Plant Operators Laws.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Public Water Supply Laws	98	30	39	29	16	2	0	1	1	3	39	4	32
Water Treatment Plant Operators Laws	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	98	30	39	29	16	2	0	1	1	3	39	4	32

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 21. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Public Water Supply Laws and Water Treatment Plant Operators Laws

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
PWS	8/4/93	ADM	Closed	The Lodges	Missoula	Surface water treatment rule violation		
PWS	3/25/94	ADM	Closed	Seeley Lake Water Dist	Missoula	Surface water treatment rule violation		
PWS	10/2/96	ADM	Closed	Katy's Wildlife Sanctuary	Teton	Failure to monitor	\$1,035	
PWS	10/2/96	ATC	Closed	Judes Longbranch Bar and Café	Yellowstone	Failure to monitor	\$3,320	
PWS	10/16/96	ADM	Closed	Blue Moon Saloon	Sheridan	Failure to monitor	\$3,105	\$2,000
PWS	4/4/97	ATC	Closed	Eastview Homowners Association	Missoula	Acute MCL violation		
PWS	7/31/97	ADM	Closed	Centerville Bar	Cascade	Failure to monitor	\$685	
PWS	9/15/97	ADM	Closed	Gallatin Mobile Home Court	Gallatin	Failure to monitor	\$2,019	
PWS	10/17/97	ATC	Closed	Park Garden Estates	Cascade	Failure to monitor	\$802	
PWS	10/24/97	A&C	Closed	Deer Creek Mobile Home Park	Sweetgrass	Failure to monitor	\$6,071	\$250
PWS	10/24/97	ADM	Closed	Cozy Court Mobile Home Park	Missoula	Failure to monitor	\$967	\$967
PWS	10/24/97	ADM	Closed	Box Elder School District 13-G	Hill	Failure to provide treatment	\$802	
PWS	10/24/97	ADM	Closed	Lone Rock School District #13	Ravalli	Failure to monitor	\$1,492	
PWS	10/24/97	ADM	Closed	Four Corners Business Park	Gallatin	Failure to monitor	\$680	
PWS	10/24/97	ADM	Closed	Bozeman Longhorn Apartments	Gallatin	Failure to monitor	\$860	\$300
PWS	9/29/98	ADM	Closed	Indiana University Geologic Station	Jefferson	Construction, modification or operation without approval		
PWS	1/13/99	ADM	Closed	Grasshopper Inn	Beaverhead	Failure to monitor	\$1,380	\$200
PWS	1/21/99	ADM	Closed	State Line Casino	Roosevelt	Failure to monitor	\$1,794	
PWS	1/21/99	ADM	Closed	Woody's Country Store	Flathead	Failure to monitor	\$1,104	\$920
PWS	1/21/99	ADM	Closed	Montana Coffee Trader, Inc.	Flathead	Failure to monitor	\$900	
PWS	2/8/99	ADM	Closed	Cactus Flats Trailer Court	Lewis & Clark	Failure to monitor	\$11,053	
PWS	3/8/99	ADM	Closed	Hidden Lake Water Users	Sheridan	Failure to use a certified operator	\$1,870	\$1,500
PWS	3/8/99	ADM	Closed	Lion Mountain Subdivision	Flathead	Failure to use a certified operator	\$1,955	
PWS	3/8/99	ADM	Closed	Blue Mountain Trailer Court	Missoula	Failure to use a certified operator	\$2,295	
PWS	3/8/99	ADM	Closed	Outlook County Sewer & Water District	Sheridan	Failure to use a certified operator	\$2,635	\$500
PWS	6/10/99	ADM	Closed	Cactus Flats Trailer Court	Lewis & Clark	Failure to pay fees	\$5,682	

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
PWS	6/21/99	ADM	Closed	Turah Pines Bar	Missoula	Failure to monitor	\$1,562	\$500
PWS	6/21/99	ADM	Closed	Riverfront RV Park	Powell	Failure to monitor	\$886	\$500
PWS	6/21/99	ADM	Closed	Glen Bowl Lanes	Dawson	Failure to monitor	\$824	\$550
PWS	6/21/99	ADM	Closed	Lolo Baptist Church	Missoula	Failure to monitor	\$3,580	
PWS	11/22/99	ADM	Closed	Thompson Falls Golf Course	Sanders	Failure to monitor	\$544	
PWS	12/16/99	ADM	Closed	Moutain Heritage Water System	Lewis & Clark	Failure to use certified operator	\$1,020	\$700
PWS	9/29/98		Development	Westview Mobile Home Park	Missoula	Failure to monitor		
PWS	6/21/99		Development	River Grove Estates	Yellowstone	Failure to monitor		
PWS	11/22/99		Development	Richland County Valley View Water Users Association	Richland	Failure to monitor		
PWS	11/22/99		Development	Hidden Lake Water Users Association	Yellowstone	Failure to monitor		
PWS	11/22/99		Development	Glacier Ridge	Flathead	Failure to monitor		
PWS	12/1/99		Development	Overlook Subdivision	Lake	Failure to monitor		
PWS	12/1/99		Development	The Round House	Gallatin	Failure to monitor		
PWS	12/1/99		Development	Happy Valley Water District	Flathead	Failure to monitor		
PWS	12/1/99		Development	Skyline Trailer Court and RV Park		Failure to monitor		
PWS	12/1/99		Development	Shady Nook Trailer Court	Beaverhead	Failure to monitor		
PWS	12/1/99		Development	Junction City Saloon	Yellowstone	Failure to monitor		
PWS	12/1/99		Development	Bitterroot Trailer Court	Hill	Failure to monitor		
PWS	12/1/99		Development	Lesley Acres Mobile Home Park	Gallatin	Failure to monitor		
PWS	1/5/00		Development	Trails End Trailer Park	Lewis & Clark	Failure to monitor		
PWS	2/11/00		Development	Red Lodge Mountain Ski Area	Carbon	Construction, modification or operation of a system without a permit		
PWS	5/31/00		Development	Fort Missoula	Missoula	Failure to monitor		
PWS	6/21/99		Vacated		Lake	Failure to monitor		
PWS	10/24/97	CIVIL	Litigation	Skyline Trailer Court and RV Park	Beaverhead	Failure to monitor	\$4,165	
PWS	6/21/99	CIVIL	Litigation	City of West Yellowstone	Gallatin	Construction, modification or operation without plan approval		
PWS	10/2/96	CIVIL	Stayed	Skyline Trailer Court and RV Park	Beaverhead	Failure to monitor	\$680	
PWS	9/15/97	ADM	Suspended	Lakeside Estates Subdivison, Phase 1	Flathead	Construction, modification, or operation of a system without plan approval		
PWS	9/29/98	ADM	Suspended	Hideaway Trailer Park	Flathead	Failure to monitor		
PWS	6/21/99	ADM	Suspended	The 320 Ranch	Gallatin	Failure to monitor		

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
PWS	1/1/92	ADM	Under Order	Hill County Rural Water System	Hill	Surface water treatment rule violation		
PWS	8/4/93	ADM	Under Order	Dennys NKA Middle Fork River Inn	Flathead	Surface water treatment rule violations		
PWS	8/16/93	ADM	Under Order	East Glacier Water & Sewer District	Glacier	Surface water treatment rule violation		
PWS	8/16/93	ADM	Under Order	City of Libby PWS	Lincoln	Surface water treatment rule violation		
PWS	5/9/94	ADM	Under Order	South Hills Water & Sewer Dist	Yellowstone	Surface water treatment rule violation		
PWS	5/3/96	ADM	Under Order	Rae Water & Sewer District	Gallatin	Construction, modification, or operation without approval		
PWS	10/2/96	ADM	Under Order	Patriot Water Systems	Cascade	Failure to monitor	\$14,424 \$3,092	\$2,027
PWS	10/2/96	ADM	Under Order	Essex Water Users Association	Flathead	Surface water treatment rule violation		
PWS	7/7/97	ADM	Under Order	City of Whitefish PWS	Flathead	Surface water treatment rule violation		
PWS	10/24/97	CIVIL	Under Order	Valley Drive Mobile Home Park	Custer	Failure to monitor	\$2,285 \$6,251	\$2,784
PWS	10/24/97	CIVIL	Under Order	Granrud Water Company	Flathead	Failure to monitor	\$2,759	
PWS	12/24/98	CIVIL	Under Order	Rockvale Travel Plaza	Carbon	Failure to monitor	\$2,208 \$2,208	
PWS	12/24/98	ADM	Under Order	Packer's Roost	Flathead	Failure to monitor	\$2,756	
PWS	1/21/99	CIVIL	Under Order	Elkhorn Store and RV Park	Madison	Failure to monitor	\$1,932	
PWS	6/10/99	ADM	Under Order	Lavina Crossing	Golden Valley	Failure to pay fees	\$4,653	
PWS	6/10/99	ADM	Under Order	Fifth Ace Saloon & Trailer Court	Gallatin	Failure to pay fees	\$4,725	
PWS	6/10/99	ADM	Under Order	Fireside Casino	Broadwater	Failure to pay fees	\$4,653	\$500
PWS	6/21/99	ADM	Under Order	Lazy KX Bar	Fergus	Failure to monitor	\$1,924	
PWS	6/21/99	ADM	Under Order	Emerald Green Golf Club	Cascade	Failure to monitor	\$1,510	\$500
PWS	6/21/99	ADM	Under Order	Hole in the Wall Lodge	Mineral	Failure to monitor	\$1,140	
PWS	6/21/99	ADM	Under Order	Mangold's General Store & Motel	Mineral	Failure to monitor	\$1,928	
PWS	6/21/99	ADM	Under Order	Torres Café	Yellowstone	Failure to monitor	\$1,380	
PWS	6/21/99	ADM	Under Order	Marie's Italian Café and Deli	Ravalli	Failure to monitor	\$2,374	
PWS	6/21/99	ADM	Under Order	Timbercrest Girl Scout Camp	Carbon	Failure to monitor	\$406	
PWS	6/21/99	ADM	Under Order	Creekside Motel & RV Park	Lincoln	Failure to monitor	\$1,256	
PWS	7/14/99	ADM	Under Order	Mountain Acres Mobile Home Park	Fergus	Failure to monitor	\$445	
PWS	7/14/99	ADM	Under Order	City of Neihart	Cascade	Failure to provide treatment	\$17,429	
PWS	8/10/99	CIVIL	Under Order	Cactus Flats Trailer court	Lewis & Clark	Failure to comply with an		\$1,500

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
						administrative order		
PWS	8/25/99	ADM	Under Order	Thompson Falls PWS System	Sanders	Surface water treatment rule		
PWS	11/22/99	ADM	Under Order	Grizzly Bar and Grill	Madison	Failure to monitor	\$406	
PWS	11/22/99	ADM	Under Order	Lindsay Recreation	Dawson	Failure to monitor	\$824	
PWS	11/22/99	ADM	Under Order	Lost Prairie Lounge	Flathead	Failure to monitor	\$1,786	
PWS	11/22/99	ADM	Under Order	Land of Magic Supper Club	Gallatin	Failure to monitor	\$134	
PWS	11/22/99	ADM	Under Order	Wilderness Treatment Center	Flathead	Failure to monitor	\$1,104	
PWS	12/1/99	ADM	Under Order	TJ's Restaurant and Lounge	Lincoln	Failure to monitor	\$1,100	
PWS	12/1/99	ADM	Under Order	Big Sky Corner	Sweet Grass	Failure to monitor	\$1,372	
PWS	12/16/99	ADM	Under Order	City of Lodge Grass PWS System	Big Horn	Failure to use certified operator	\$4,560	\$500
PWS	9/29/98	ADM	ER withdrawn	Windsor Estates	Yellowstone	Failure to monitor		
PWS	1/21/98	ADM	ER withdrawn	Evergreen at Clancy	Jefferson	Failure to monitor		
PWS	3/8/99	ADM	ER withdrawn	Hilltop Estates	Richland	Failure to use certified operator		
PWS	6/10/99	ADM	ER withdrawn	Middle Fork Motel and Trailer Court	Flathead	Failure to pay fees		

<sup>1</sup> PWS = Public Water Supply Laws

## **B. AIR AND WASTE MANAGEMENT BUREAU**

### **Asbestos Control Act, 75-2-501, et seq., MCA**

#### **1. Program Description**

The Asbestos Control Program has been delegated by the U.S. Environmental Protection Agency to administer sections of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations. NESHAP regulations govern building renovations/demolitions, asbestos disposal, and other asbestos-related activities. The program regulates asbestos projects in buildings involving the abatement of 3 or more lineal or square feet of friable or potentially friable asbestos-containing material (ACM). Asbestos abatement includes the repair, enclosure, encapsulation, removal, and/or disposal of friable ACM or ACM that may become friable. The program also administers standards for asbestos-related occupation accreditation and course approval. Inspections of regulated asbestos activities are conducted routinely to determine compliance. Additional compliance determinations are made during complaint investigations.

#### **2. Compliance Assistance Promotion**

The program is engaged in several activities to provide compliance assistance. Ongoing efforts include response to written and telephone requests for information. Requests for information deal with diverse topics such as accreditation requirements, identification of asbestos-containing materials and best work practices. During FY99 and FY00, the program responded to approximately 1500 and 2400 requests for information, respectively.

#### **3. Size and Description of the Regulated Community; Estimate of Rate of Compliance**

Any asbestos abatement project or building demolition of 3 linear or 3 square feet of asbestos-containing material or more is subject to regulation by the Asbestos Control Program. In FY99, 235 permits were issued for asbestos abatement projects. In FY00, 246 permits were issued for asbestos abatement projects. In FY99 and FY00, 57 and 90 inspections, respectively, were conducted by the program. In FY99, the program identified violations at two abatement projects. In FY00, the program identified violations at four abatement projects. The rate of compliance can be defined as the number of observed violations divided by the total number of inspections conducted. Using this formula, the compliance rates for FY99 and FY00 were 96% and 95%, respectively. Most of the violations were detected during complaint investigations.

#### **4. Description of Documented Non-compliance and Response to Violations**

A summary of the observed violations, including identification of source category, description of violation, significance of violation, method of discovery, date of violation, date and type of response to violations, and date of return to compliance, is included in Table 22. The Asbestos Control Program takes a variety of actions toward observed violations. The response is a function of the severity of the deviation from requirements as defined by NESHAP demolition and renovation guidelines. A significant violator (SV) is identified as a source which deviates from the requirements on notification, emissions control, transport or disposal of asbestos-containing material or waste.

Table 22. Summary of Asbestos Violations FY99 and FY00

Source Category	Description of Violation	Significance of Violation <sup>1</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>2</sup>	Date of Return to Compliance
Owner	Unaccredited worker	SV	Complaint	3/24/98	12/2/98 NOV 2/8/00 ER	2/8/00
Contractor	Unaccredited worker	SV	Complaint	3/24/98	12/2/98 NOV 2/8/00 ER	2/8/00
Contractor	Unpermitted abatement project, Unaccredited workers	SV	Inspection	7/23/98	2/19/99 NOV	7/23/98
Owner	Unpermitted abatement project, Unaccredited workers	SV	Inspection	7/23/98	2/19/99 NOV	7/23/98
Owner	Unpermitted abatement project	Non SV	Complaint	7/8/99	9/18/99 NOV	7/18/00
Owner	Unpermitted abatement project	Non SV	Inspection	8/12/99	9/28/99 NOV	8/12/99
Owner	No notification	Non-SV	Complaint	10/27/99	3/6/00 NOV	10/27/00
Owner	Unpermitted abatement project, Unaccredited workers	SV	Complaint	2/18/00	5/24/00 NOV	2/18/00
Contractor	Unpermitted abatement Project, Unaccredited workers	SV	Complaint	2/18/00	5/24/00 NOV	2/18/00

Notes to Table

- 1 SV = Significant Violator-a source which deviates from requirements on notification, emissions control, transport or disposal of asbestos containing material or waste.
- 2 Type of Enforcement-  
NOV = Notice of Violation or Violation Letter  
ER = Enforcement Request

Table 23. Status and number of complaints related to the Asbestos Control Act managed by the Enforcement Division during FY99-FY00.

Status	Asbestos
Active: under investigation by ENFD	1
Active: under investigation by program	4
Investigated and closed by ENFD	12
Investigated and closed by program	30
Referred to another agency	2
Enforcement action requested for resolution	0
Total	49

## 5. Enforcement Activities

Table 24. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Asbestos Control Act.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Asbestos Control Act	9	0	8	1	1	0	1	0	0	0	5	0	2
Total	9	0	8	1	1	0	1	0	0	0	5	0	2

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 25. Facts about the individual enforcement actions that were initiated during the biennium under the Asbestos Control Act.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
Asbestos Control Act	01/12/98	Civil	Closed	Western Compliance		Failure to obtain permit, failure to use accredited personnel	\$ 6,030	\$ 5,500
Asbestos Control Act	03/03/99	Civil	Closed	Golden Triangle Community Mental Health Center	Lewis & Clark	Failure to obtain a permit, Failure to use accredited personnel		\$ 7,000
Asbestos Control Act	05/04/00		Development	Cenex & Weldtech Services	Yellowstone	Failure to use accredited personnel		
Asbestos Control Act	01/12/98	Civil	Under Order	Steven Nudelman	Fergus	Failure to obtain a permit	\$ 1,000	
Asbestos Control Act	01/12/98	Civil	Under Order	Gordon McGuire	Fergus	Failure to obtain a permit, failure to use accredited personnel	\$ 1,000	
Asbestos Control Act	01/27/98		Referred	John Loucks (Opheim Radar Base)	Valley	Failure to use accredited personnel, failure to report		
Asbestos Control Act	01/27/98	Civil	Under Order	David King, Sr.	Fergus	Failure to obtain a permit	\$ 5,000	
Asbestos Control Act	01/27/98	Civil	Under Order	Randy Keiser	Fergus	Failure to obtain a permit, failure to use accredited personnel	\$ 1,200	
Asbestos Control Act	05/28/98	Civil	Under Order	Lawrence Brennan	Yellowstone	Failure to be accredited		\$ 500
Asbestos Control Act	02/19/99	Civil	Under Order	Terry French	Lewis & Clark	Failure to obtain a permit	\$ 9,000	

## **Montana Hazardous Waste Act, 75-10-401, et seq., MCA**

### **1. Program description**

As a state program authorized by EPA, and through the Montana Hazardous Waste Management Act and its administrative rules, the Hazardous Waste Program controls a universe of waste which is identical to the federal program administered by EPA. The program identifies and regulates hazardous waste generators, transporters, recycling facilities, and used oil handlers at least equivalent to the requirements of the federal program. The program administers requirements for permitted hazardous waste management facilities which are equivalent to the federal program, including provisions for facility wide corrective action. The program conducts inspections of the regulated community on an ongoing basis to determine compliance. Additional compliance inspections are made during the investigation of complaints. The program has developed and follows a consistent policy for categorizing hazardous waste violations and for taking action appropriate to the seriousness of the violation. Technical assistance and compliance outreach to generator and the public is also provided by the program.

### **2. Compliance Assistance Promotion**

The program is engaged in several activities to provide compliance assistance. Ongoing efforts include response to written and telephone requests for information, waste minimization review during compliance evaluation inspections, the development of a small business handbook, contractor service contact lists, and waste stream-specific handouts to answer frequently asked questions. The program repeated the release of two public service advertisement videos on used oil and hazardous waste management during this time frame. Program personnel contributed to the development of a draft web page with compliance assistance information. Program personnel also provided general and industry sector-specific presentations on hazardous waste management when requested.

### **3. Size and Description of the Regulated Community and estimated rate of compliance**

As of July 1, 2000, there are 12 hazardous waste management facilities in Montana with final or temporary permits (interim status) and numerous hazardous waste handlers. The number of handlers remained relatively stable over the last two fiscal years. Table 26 presents the number and types of handlers regulated by the program for FY99 and FY00.

Table 26. Number of Hazardous Waste Handlers Regulated by the Department

Handler Category	FY99	FY00
Treatment, Storage and Disposal Facilities (TSD)	12	12
Large Quantity Generator (LQG)	54	44
Small Quantity Generator (SQG)	115	115
Conditionally Exempt Generator (CEG)	581	589
Used Oil Handler (UOH)	56	54
Transporters	42	41

TSD - A facility that is required to have a permit to treat, store, or dispose of hazardous waste

LQG - A large quantity generator is one that produces greater than 2,200 pounds of hazardous waste in any month.

SQG - A small quantity generator is one that produces between 220 and 2,200 pounds of hazardous waste in any month.

CEG - A conditionally exempt generator is one that produces less than 220 pounds of hazardous waste in any month.

UOH - A handler who is required to register because he recycles, markets or stores regulated quantities of used oil.

TRANSPORTERS - A transporter of hazardous waste.

In FY99 and FY00, 287 and 194 inspections, respectively, were conducted. The decrease in the number of inspections since the last biennium is attributed to increased demands on staff time for formal case development.

In FY99, the program identified violations at 58 handlers. In FY00, the program identified violations at 64 handlers. The overall rate of compliance can best be defined as the number of handlers with observed violations divided by the total number of inspections conducted. Using this formula, the overall compliance rates for FY99 and FY00 were 80% and 67%, respectively. However, the percentage of violations that deviated significantly from the regulations and required formal enforcement was only 2% for both fiscal years.

#### **4. Description of Documented Non-compliance and Response to Violations**

A summary of the observed violations, including identification of handler category, description of violation, significance of violation, method of discovery, date of violation, date and type of response to violations, and date of return to compliance, is included in Table 27.

The Hazardous Waste Program takes a variety of actions toward documented violations. The response is a function of the severity of the deviation from requirements as defined by violation class and violator category. Class 1 violations are deviations from regulations or provisions of compliance orders, consent agreements, consent decrees, or permit conditions which could result in a failure to: a) assure that hazardous waste is destined for and delivered to authorized treatment, storage, or disposal facilities (TSDFs); or b) prevent releases of hazardous waste or constituents, both during the active and any applicable post-closure periods of the facility operation where appropriate; or c) assure early detection of such releases; or d) perform emergency clean-up operations or other corrective actions for releases. Class 2 violations are those violations that do not meet the criteria for Class I violations.

With regard to violator category, a High Priority Violator (HPV) is a handler who has caused exposure or a substantial likelihood of exposure to hazardous constituents or is a chronic violator. A Non HPV is a handler with only Class 2 violations and who is not a High Priority Violator. The timely and appropriate response to each of these is set forth in the Cooperative Enforcement Agreement with EPA.

The average time for return to compliance over FY99 and FY00 was 67 days. The longest time for return to compliance for informal enforcement was 131 days. Many minor violations, such as proper marking of waste containers, can be and are resolved by the handler in the field at the time of inspection. As such, these actions represent an almost instantaneous return to compliance. Such violations are noted, nevertheless, in the inspection report and RCRIS database to allow tracking and identification of patterns of waste mismanagement.

Table 27. Summary of Hazardous Waste Violations FY99 and FY00

Handler Category <sup>1</sup>	Description of Violation	Significance of Violation <sup>2</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>3</sup>	Date of Return to Compliance
<b>FY99</b>						
CEG	Used Oil Management	Non HPV	Inspection	7/22/98	7/24/98 WL	9/4/98
CEG	Used Oil Management	Non HPV	Inspection	8/4/98	8/17/98 WL	9/4/98
CEG	Used Oil Soil Contamination	Non HPV	Inspection	8/6/98	9/2/98 WL	9/18/98
CEG	Unpermitted TSD	HPV	Inspection	8/25/98	3/12/99 ER	Pending
CEG	Used Oil Management	Non HPV	Inspection	10/21/98	10/21/98 WL	11/5/98
CEG	Disposal of CEG Waste	Non HPV	Inspection	10/22/98	11/10/98 WL	11/11/98
CEG	Unpermitted TSD	HPV	Inspection	11/9/98	1/7/99 ER	Pending
CEG	Used Oil Management	Non HPV	Inspection	12/3/98	12/30/98 WL	1/7/99
CEG	Used Oil Management	Non HPV	Inspection	12/15/98	12/15/98 WL	12/28/98
CEG	Improper Disposal	Non HPV	Inspection	1/15/99	1/28/99 WL	2/19/99
CEG	Accumulation Limits	Non HPV	Inspection	4/19/99	4/22/99 WL	8/12/99
CEG	Unpermitted TSD	HPV	Inspection	4/23/99	5/6/99 ER	Pending
CEG	Used Oil Management	Non HPV	Inspection	4/29/99	4/30/99 WL	5/6/99
CEG	Solvent Registration	Non HPV	Inspection	5/13/99	6/14/99 WL	6/25/99
CEG	Failure to Characterize Waste	Non HPV	Inspection	5/25/99	6/22/99 WL	7/12/99
CEG	Used Oil Management	Non HPV	Inspection	6/9/99	6/22/99 WL	7/14/99
LQG	Used Oil Soil Contamination	Non HPV	Inspection	7/9/98	7/20/98 WL	8/19/98
LQG	Accumulation Start Date	Non HPV	Inspection	8/27/98	9/1/98 WL	10/2/98
LQG	Used Oil Management	Non HPV	Inspection	9/16/98	9/18/98 WL	10/7/98
LQG	Accumulation Start Date	Non HPV	Inspection	9/17/98	10/9/98 WL	11/9/98
LQG	Universal Waste Management	Non HPV	Inspection	10/20/98	10/30/98 WL	12/1/98
LQG	Unpermitted TSD	HPV	Inspection	10/21/98	12/3/98 ER	8/8/00
LQG	Universal Waste Management	Non HPV	Inspection	11/6/98	11/6/98 WL	12/18/98

Handler Category <sup>1</sup>	Description of Violation	Significance of Violation <sup>2</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>3</sup>	Date of Return to Compliance
LQG	Inappropriate Storage	HPV	Inspection	12/29/98	2/18/99 ER	Pending
LQG	Satellite Requirements	Non HPV	Inspection	2/23/99	3/11/99 WL	3/24/99
LQG	Universal Waste Management	Non HPV	Inspection	3/24/99	4/13/99 WL	4/13/99
NN	Used Oil Management	Non HPV	Inspection	7/8/98	7/24/98 WL	9/16/98
NN	Used Oil Management	Non HPV	Inspection	7/9/98	7/20/98 WL	8/6/98
NN	Used Oil Soil Contamination	HPV	Complaint	7/9/98	7/31/98 ER	Pending
NN	Used Oil Soil Contamination	Non HPV	Inspection	8/4/98	8/13/98 WL	9/16/98
NN	Used Oil Soil Contamination	Non HPV	Inspection	8/4/98	8/24/98 WL	10/5/98
NN	Used Oil Soil Contamination	Non HPV	Inspection	8/6/98	9/2/98 WL	9/21/98
NN	Used Oil Management	Non HPV	Inspection	8/6/98	9/2/98 WL	11/5/98
NN	Waste Determination	Non HPV	Inspection	9/18/98	9/28/98 WL	10/29/98
NN	Used Oil Management	Non HPV	Inspection	10/21/98	11/5/98 WL	11/25/98
NN	Used Oil Management	Non HPV	Inspection	10/21/98	11/6/98 WL	11/13/98
NN	Used Oil Management	Non HPV	Inspection	12/16/98	12/16/98 WL	12/22/98
NN	Used Oil Management	Non HPV	Inspection	12/16/98	12/16/98 WL	12/22/98
NN	Used Oil Management	Non HPV	Inspection	1/13/99	1/13/99 WL	1/22/99
NN	Used Oil Management	Non HPV	Inspection	1/15/99	1/15/99 WL	1/25/99
NN	Used Oil Management	Non HPV	Inspection	2/23/99	3/2/99 WL	3/11/99
NN	Used Oil Management	Non HPV	Inspection	3/23/99	5/13/99 WL	6/3/99
NN	Accumulation Start Date	Non HPV	Inspection	3/24/99	3/31/99 WL	7/14/99
NN	Used Oil Soil Contamination	Non HPV	Inspection	4/14/99	4/14/99 WL	4/23/99
NN	Used Oil Soil Contamination	Non HPV	Inspection	4/29/99	5/5/99 WL	7/27/99
NN	Used Oil Management	Non HPV	Inspection	6/10/99	6/14/99 WL	6/29/99
SQG	Pre-Transport Requirements	Non HPV	Inspection	7/1/98	7/21/98 WL	8/20/98
SQG	Pre-Transport Requirements	Non HPV	Inspection	7/22/98	7/30/98 WL	8/10/98
SQG	Accumulation Start Date	Non HPV	Inspection	9/15/98	10/2/98 WL	10/14/98
SQG	Used Oil Management	Non HPV	Inspection	12/16/98	12/16/98 WL	12/22/98
SQG	Spent Electric Lamps	Non HPV	Inspection	4/1/99	4/14/99 WL	4/21/99
SQG	Universal Waste Management	Non HPV	Inspection	4/1/99	4/15/99 WL	6/25/99
SQG	Manifest Requirements	Non HPV	Inspection	4/6/99	4/20/99 WL	5/3/99
SQG	Universal Waste Management	Non HPV	Inspection	4/7/99	4/28/99 WL	4/28/99

Handler Category <sup>1</sup>	Description of Violation	Significance of Violation <sup>2</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>3</sup>	Date of Return to Compliance
SQG	Used Oil Management	Non HPV	Inspection	6/10/99	6/22/99 WL	8/5/99
TRANS	Used Oil Management	Non HPV	Inspection	6/8/99	6/17/99 WL	7/9/99
TRANS	Maintaining Analytical Results	Non HPV	Inspection	6/9/99	6/18/99 WL	7/2/99
TRANS	Used Oil Soil Contamination	Non HPV	Inspection	6/10/99	6/28/99 WL	7/30/99
TSD	Facility Contact	Non HPV	Inspection	10/13/98	10/19/98 WL	11/17/98
TSD	No Signage	Non HPV	Inspection	10/14/98	10/30/98 WL	12/11/98
TSD	Pre-Transport Requirements	Non HPV	Inspection	10/23/98	11/10/98 WL	11/13/98
TSD	Failure to Close Properly	HPV	Inspection	1/5/99	2/8/99 ER	Pending
TSD	Manifest Exception Reporting	Non HPV	Inspection	3/31/99	4/21/99 WL	5/13/99
TSD	Ground Water Monitoring	Non HPV	Inspection	6/29/99	7/20/99 WL	11/8/99
UOH	Used Oil Management	Non HPV	Inspection	10/21/98	10/21/98 WL	10/23/98
UOH	Used Oil Management	Non HPV	Inspection	12/17/98	12/29/98 WL	1/12/99
UOH	Used Oil Management	Non HPV	Inspection	3/10/99	3/23/99 WL	4/13/99
UOH	Used Oil Management	Non HPV	Complaint	3/29/99	4/20/99 WL	5/18/99
UOH	Waste Determination	Non HPV	Inspection	4/28/99	5/3/99 WL	6/11/99
UOH	Used Oil Management	Non HPV	Inspection	6/7/99	6/15/99 WL	6/24/99
<b>FY00</b>						
CEG	Used Oil Management	Non HPV	Inspection	7/28/99	8/11/99 WL	8/30/99
CEG	Used Oil Management	Non HPV	Inspection	10/20/99	11/8/99 WL	12/10/99
CEG	Used Oil Soil Contamination	Non HPV	Inspection	10/20/99	11/8/99 WL	12/8/99
CEG	Used Oil Management	Non HPV	Inspection	10/21/99	11/8/99 WL	11/23/99
CEG	Used Oil Management	Non HPV	Inspection	10/22/99	10/22/99 WL	10/27/99
CEG	Used Oil Management	Non HPV	Inspection	12/3/99	12/3/99 WL	12/20/99
CEG	Used Oil Soil Contamination	Non HPV	Inspection	3/6/00	3/6/00 WL	3/22/00
CEG	Used Oil Management	Non HPV	Inspection	4/26/00	4/26/00 WL	5/8/00
CEG	Waste Characterization	Non HPV	Inspection	6/15/00	7/11/00 WL	Pending
CEG	Registration	Non HPV	Inspection	6/23/00	7/12/00 WL	Pending
GEG	Waste Characterization	Non HPV	Inspection	6/22/00	Pending	Pending
LQG	Waste Characterization	HPV	Inspection	8/24/99	10/25/99 ER	Pending
LQG	Used Oil Management	Non HPV	Inspection	8/26/99	8/26/99 WL	9/22/99
LQG	Satellite Requirements	Non HPV	Inspection	8/26/99	9/24/99 WL	11/3/99
LQG	Manifest Discrepancies	HPV	Inspection	12/2/99	3/13/00 ER	Pending

Handler Category <sup>1</sup>	Description of Violation	Significance of Violation <sup>2</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>3</sup>	Date of Return to Compliance
LQG	Generator General	Non HPV	Inspection	12/3/99	12/27/99 WL	2/1/00
LQG	Used Oil Management	Non HPV	Inspection	2/2/00	2/14/00 WL	2/23/00
LQG	Waste Characterization	Non HPV	Inspection	2/14/00	2/18/00 WL	3/7/00
LQG	Used Oil Management	Non HPV	Inspection	5/17/00	5/17/00 WL	6/13/00
NN	Used Oil Management	Non HPV	Inspection	7/27/99	8/5/99 WL	9/1/99
NN	Haz Waste Soil Contamination	Non HPV	Inspection	8/11/99	8/16/99 WL	9/9/99
NN	Used Oil Management	Non HPV	Inspection	10/8/99	10/14/00 WL	11/1/99
NN	Manifest Record Keeping	Non HPV	Inspection	10/20/99	11/22/99 WL	12/13/99
NN	Used Oil Management	Non HPV	Inspection	10/22/99	10/22/99 WL	11/3/99
NN	Used Oil Management	Non HPV	Inspection	2/1/00	2/24/00 WL	3/8/00
NN	Used Oil Soil Contamination	Non HPV	Inspection	3/1/00	3/20/00 WL	4/19/00
NN	Pre Transport Requirements	Non HPV	Inspection	3/1/00	3/21/00 WL	4/1/8/00
NN	Used Oil Management	Non HPV	Inspection	3/1/00	3/1/00 WL	3/23/00
NN	Used Oil Management	Non HPV	Inspection	3/1/00	3/15/00 WL	5/23/00
NN	Used Oil Management	Non HPV	Inspection	3/22/00	3/22/00 WL	4/7/00
NN	Used Oil Management	Non HPV	Inspection	3/22/00	3/24/00 WL	6/14/00
NN	Used Oil Management	Non HPV	Inspection	3/22/00	3/31/00 WL	4/7/00
NN	Waste Characterization	Non HPV	Inspection	4/11/00	4/24/00 WL	5/23/00
NN	Used Oil Management	Non HPV	Inspection	4/20/00	4/20/00 WL	5/8/00
NN	Used Oil Soil Contamination	Non HPV	Inspection	4/21/00	4/27/00 WL	6/26/00
NN	Used Oil Management	Non HPV	Inspection	4/25/00	5/16/00 WL	6/21/00
NN	Used Oil Management	Non HPV	Inspection	4/26/00	4/26/00 WL	5/22/00
NN	Used Oil Management	Non HPV	Inspection	4/26/00	4/26/00 WL	5/15/00
NN	Used Oil Management	Non HPV	Inspection	5/15/00	5/23/00 WL	7/24/00
NN	Used Oil Soil Contamination	HPV	Inspection	5/16/00	6/7/00 ER	Pending
NN	Used Oil Management	Non HPV	Inspection	6/14/00	6/28/00 WL	Pending
NN	Used Oil Management	Non HPV	Inspection	6/21/00	7/7/00 WL	Pending
NN	Used Oil Management	Non HPV	Inspection	6/21/00	7/26/00 WL	Pending
NN	Used Oil Management	Non HPV	Inspection	6/21/00	6/21/00 WL	7/7/00
NN	Used Oil Management	Non HPV	Inspection	6/21/00	6/21/00 WL	7/18/00
NN	Used Oil Management	Non HPV	Inspection	6/22/00	7/5/00 WL	7/19/00
NN	Used Oil Soil Contamination	Non HPV	Inspection	6/22/00	7/26/00 WL	Pending
SQG	Satellite Requirements	Non HPV	Inspection	10/21/99	11/8/99 WL	11/15/99
SQG	Universal Waste Requirements	Non HPV	Inspection	11/30/99	1/24/00 WL	1/28/00

Handler Category <sup>1</sup>	Description of Violation	Significance of Violation <sup>2</sup>	Method of Discovery	Date of Violation Discovery	Date and Type of Response to Violations <sup>3</sup>	Date of Return to Compliance
SQG	Waste Characterization	Non HPV	Inspection	4/12/00	5/8/00 WL	6/9/00
SQG	Record Retention	Non HPV	Inspection	4/12/00	5/9/00 WL	5/18/00
SQG	Used Oil Management	Non HPV	Inspection	4/13/00	4/13/00 WL	5/12/00
SQG	Used Oil Soil Contamination	Non HPV	Inspection	4/13/00	4/26/00 WL	7/18/00
SQG	Pre Transport Requirements	Non HPV	Inspection	4/14/00	5/15/00 WL	5/19/00
SQG	Used Oil Management	Non HPV	Inspection	6/15/00	7/7/00 WL	7/19/00
SQG	Used Oil Management	Non HPV	Inspection	6/15/00	6/29/00 WL	Pending
SQG	Universal Waste Requirements	Non HPV	Inspection	6/15/00	6/29/00 WL	7/21/00
Trans	Used Oil Specification Fuel	Non HPV	Inspection	12/10/99	1/11/00 WL	1/11/00
TSD	Land Ban Requirements	HPV	Inspection	7/30/99	10/18/99 ER	Pending
TSD	Transfer of Ownership	Non HPV	Inspection	10/12/99	10/12/99 WL	11/19/99
TSD	Universal Waste Management	Non HPV	Inspection	11/16/99	12/8/99 WL	1/25/00
TSD	Satellite Requirements	Non HPV	Inspection	11/17/99	12/14/99 WL	1/24/00
TSD	Waste Characterization	Non HPV	Inspection	11/23/99	12/29/00 WL	2/2/00
TSD	Post Closure Care	Non HPV	Inspection	3/10/00	6/21/00 WL	7/21/00

1

Handler Category:

TSD - A facility that is required to have a permit to treat, store, or dispose of hazardous waste.

LQG - A large quantity generator is one that produces greater than 2,200 pounds of hazardous waste in any month.

SQG - A small quantity generator is one that produces between 220 and 2,200 pounds of hazardous waste in any month.

CEG - A conditionally exempt generator is one that produces less than 220 pounds of hazardous waste in any month.

UOH - A used oil handler.

TRANSPORTERS - A transporter of hazardous waste.

NN - (Non-notifier) An entity who is not required to notify DEQ of their waste management activities.

2

HPV = High Priority Violator

3

Type of Enforcement:

WL = Warning Letter

ER = Enforcement Request

Table 28. Status and number of complaints related to the Hazardous Waste Act managed by the Enforcement Division during FY99-FY00.

Status	Hazardous Waste	Used Oil
Active: under investigation by ENFD	5	14
Active: under investigation by program	4	1
Investigated and closed by ENFD	33	55
Investigated and closed by program	18	9
Referred to another agency	3	5
Enforcement action requested for resolution	1	0
Total	64	84

## 5. Enforcement Activities

Table 29. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Hazardous Waste Act.

Statute	Total Caseload for FY99 - FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Hazardous Waste Act	19	4	11	4	1	2	0	0	0	0	10	1	1
Total	19	4	11	4	1	2	0	0	0	0	10	1	1

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 30. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Hazardous Waste Act.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
Hazardous Waste Management Act	05/05/97	Adm	Closed	Dustin Smith	Lewis & Clark	Failure to dispose of hazardous waste properly		
Hazardous Waste Management Act	04/03/98	Adm	Closed	Montana State Prison	Powell	Failure to characterize waste; failure to mark hazardous waste containers with accumulation start dates and contents; failure to maintain generator logs.	\$ 6,700	\$ 5,000
Hazardous Waste Management Act	05/22/98	Adm	Closed	Columbia Falls Aluminum Co.	Flathead	Failure to close a hazardous waste management unit as required	\$27,000	
Hazardous Waste Management Act	07/31/98	Civil	Closed	Thrifty Auto Body	Yellowstone	Failure to register as hazardous waste generator; failure to pay fees	\$ 8,500	\$ 1,000
Hazardous Waste Management Act	03/13/00		Development	Stillwater Mining Company	Stillwater	Failure to register as a hazardous waste generator; failure to properly manage hazardous waste.		
Hazardous Waste Management Act	02/08/99		Litigation	Asarco, Inc.	Lewis & Clark	Failure to properly store, treat and dispose of hazardous waste		
Hazardous Waste Management Act	02/08/99		Litigation	Montana State University	Gallatin	Failure to properly manage, close and operate a hazardous waste facility; failure to provide proper notification and reports.		
Hazardous Waste Management Act	02/08/92	Civil	Under Order	Granite Timber and Treating	Granite	Failure to properly handle hazardous waste.	\$13,513	
Hazardous Waste Management Act	06/01/94	Civil	Under Order	Fred Schweitzer (Logan Landfill)  County of Gallatin	Gallatin	Failure to register as a hazardous waste generator, failure to prepare a manifest, disposal of hazardous waste in an unpermitted facility.  Operation of an unpermitted hazardous waste management facility	\$ 7,500  \$ 9,000	
Hazardous Waste Management Act	07/15/97	Civil	Under Order	Milton Mason	Dawson	Used oil storage and disposal violations	\$13,200	

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
Hazardous Waste Management Act	07/31/97	Civil	Under Order	Michael Kuck Trucking	Yellowstone	Failure to characterize waste, failure to mark containers, Failure to pick up contaminated soils	\$16,629	
Hazardous Waste Management Act	01/07/99	Adm	Under Order	Glasco Lumber	Judith Basin	Unlawful disposal of hazardous waste, storage of hazardous failure to properly manage hazardous waste, failure to report.		
Hazardous Waste Management Act	03/12/99	Adm	Under Order	Robinson Forest Products	Flathead	Operating an unpermitted hazardous waste facility, improper management of hazardous waste, failure to register and report.		
Hazardous Waste Management Act	05/06/99	Adm	Under Order	3-D Refinishing & Repair	Cascade	Unlawful disposal of hazardous waste; failure to properly manage hazardous waste; failure to register and report.		
Hazardous Waste Management Act	10/18/99	Adm	Under Order	Exxon Company, USA	Yellowstone	Improper storage of hazardous waste	\$30,999	\$20,000
Hazardous Waste Management Act	10/25/99	Adm	Under Order	Livingston Rebuilt Center	Park	Failure to mark containers, improper storage of hazardous waste.	\$20,497	
Hazardous Waste Management Act	06/07/00	Adm	Under Order	Mockel Ready -Mix	Lewis & Clark	Used oil storage and disposal violation	\$ 3,750	
Hazardous Waste Management Act	05/01/98		Withdrawn		Stillwater			

## **Clean Air Act of Montana, 75-2-101, et seq., MCA**

### **1. Program Description**

The Air and Waste Management Bureau (AWMB) is responsible for administering those portions of the Federal Clean Air Act (42 U.S.C. 7401 et seq.), Clean Air Act of Montana (75-2-101, et seq., MCA)(CAA) and companion regulations (40 CFR Parts 50 through 99, Administrative Rules of Montana Title 17 Chapter 8), pertaining to compliance of air emissions from various types of facilities.

Typical staff duties within the Air and Waste Management Bureau include:

- \* Regulating emissions of criteria and hazardous air pollutants regulated in the CAA in potentially environmentally sensitive, heavily industrialized, heavily populated, and diverse topographic environments throughout the entire state;
- \* Permitting sources of air pollution (preconstruction and Title V operating permits);
- \* Conducting regular compliance inspections of all operating facilities pursuant to current permits;
- \* Recommending enforcement actions to the bureau chief and the Enforcement Division;
- \* Actively participating in the development of departmental policy regarding air quality standards and compliance processes;
- \* Coordinating and participating in a variety of technical, public, and general information meetings with other state and federal agencies, special interest groups, landowners, private businesses and the general public regarding compliance with air quality standards;
- \* Collecting and managing extensive correspondence, maps, and data files pertaining to air emissions, and using, to the extent available, state-of-the-art computer technology;
- \* Gathering a wide diversity of information on emissions, emission controls regulation and the related fields - engineering, chemistry, computer programs, etc. The bureau then uses and disseminates the information to industry, government agencies and the general public as requested.

### **2. Compliance Assistance Activities**

Air and Waste Management Bureau (AWMB) staff members provide compliance and technical assistance on a regular basis through ongoing communication with the regulated community. This assistance occurs during inspections, during the permitting process, in the development of annual emission inventories, and in written and verbal response to questions. Assistance is also provided through the semi-annual visible emissions observation (Smoke School) training and certification made available by DEQ.

### **3. Size and Description of Regulated Community and Estimated Rate of Compliance**

In terms of inspection and annual emission inventory development, the regulated community is essentially all sources/facilities with air quality permits. This includes approximately 477 total sources consisting of 253 stationary sources and 224 portable sources (see Table 31).

To a lesser extent, all potential sources of air pollution within the state may be regulated and are often the subject of a complaint response and investigation. This relates to such things as the open burning provisions and generic rules on fugitive dust control and fuel burning.

Most facilities with emission related air quality violations are back in compliance immediately or in a very short time after the incident. In those cases, enforcement is undertaken for notification and deterrence purposes. Procedural violations, such as failure to perform a source test, reflect non-compliance until the testing is completed; however, these are generally on a compliance schedule immediately after notification.

Table 31. Number of Air Emission Sources, Inspections and Violations for FY99 and FY00.

	FY99	FY00
Stationary Sources	246	253
Portable Sources	210	224
Onsite Inspections	228	250
% of Total Inspected Sources Where No Non-compliance Was Detected*	98%	96%
NOVs Issued	20	14
Number of Significant Violations	4	6

\*Comparison of NOVs issued to total number of facilities.

#### 4. Description of Documented Non-compliance and Response to Violations

Table 32 is a summary of FY99-00 non-compliance issues/actions which were addressed through issuance of an informal Notice of Violation. The table includes a description of the violation and response time frames. Some minor violations and potential violations are addressed with warning letters.

Table 32. List of Air Violations and the Response to those Violations

Source Category	Description of Violation	Significance of Violation (SV or HPV)	Method of Discovery	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	Excess SO <sub>2</sub> emissions		R	4/99	5/5/99	4/99
Stationary	Failure to meet CEM data recovery rate		R	4/99	5/5/99	4/99
Stationary	Failure to perform stack test		R	3/98	3/19/98	3/19/98 (CS)
Stationary	Failure to submit production information		R	5/99	5/11/99	5/99
Stationary	Open burning of prohibited material		I	12/99	12/22/99	12/22/99 (CS)
Stationary	Operating without permit		R	3/99	3/30/99	5/19/99
Stationary	Excess SO <sub>2</sub> emissions		R	7/98	7/20/98	7/98

Source Category	Description of Violation	Significance of Violation (SV or HPV)	Method of Discovery	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	Failure to perform stack test		R	7/98	7/23/98	7/23/98 (CS)
Stationary	Operating without permit		R	8/25/98	10/13/98	10/13/98 (CS)
Stationary	Excess SO <sub>2</sub> emission and reporting violations	SV	R	5/97	6/11/97	6/11/97 (CS)
Stationary	Failed stack tests		R	1/99	1/8/99	1/8/99 (CS)
Stationary	Ambient H <sub>2</sub> S violations		R	11/1/97	2/3/98	11/1/97
Stationary	Opacity exceedances (CEM)	SV	R	5/19/98	6/12/98	4/24/98
Stationary	Operating without permit		I	6/1/98	6/30/98	6/30/98 (CS)
Portable	Operating without permit		C	4/15/98	5/15/98	8/3/98
Stationary	Operating without permit		R	9/98	9/22/98	9/22/98 (CS)
Stationary	Operating without permit		R	9/28/98	9/28/98	9/28/98 (CS)
Stationary	Failure to submit notice		R	9/98	9/29/98	9/98
Stationary	Failed source test		R	11/98	11/18/98	11/18/98 (CS)
Portable	Failed source tests		R	11/98	11/30/98	11/30/98 (CS)
Portable	Operating without permit		I	6/15/98	7/31/98	7/31/98 (CS)
Portable	Opacity violation		I	7/7/98	7/31/98	7/7/98
Portable	Failure to submit compliance information	SV	C	5/97	5/27/97	5/27/97 (CS)
Stationary	Failure to perform source test		R	2/6/98	2/13/98	2/6/98 (CS)
Stationary	Ambient H <sub>2</sub> S violations		R	8/99	8/23/99	8/99
Stationary	Opacity violations		I	8/12/99	8/30/99	8/12/99

<b>Source Category</b>	<b>Description of Violation</b>	<b>Significance of Violation (SV or HPV)</b>	<b>Method of Discovery</b>	<b>Date of Discovery</b>	<b>Date of Follow-up NOV Issued</b>	<b>Date Compliance Achieved</b>
Stationary	Opacity and recordkeeping violations		I	8/17/99	9/3/99	8/17/99
Stationary	Failure to submit information		R	5/99	5/11/99	5/11/99 (CS)
Stationary	Failure to perform source test		R	4/99	4/8/99	4/8/99 (CS)
Stationary	Failed source test		R	8/98	8/14/98	8/14/98
Stationary	Data recovery violation	SV	R	Multiple	12/2/97	12/31/97
Stationary	Failure to pay fees		R	12/96	5/28/97	Pending
Stationary	Excess SO <sub>2</sub> emissions		R	8/8/98	2/19/99	8/8/98
Stationary	Failed source tests	SV	R	8/98	10/8/98	8/98
Stationary	Failure to obtain permit	HPV	I	2/24/99	4/12/99	8/18/99
Stationary	Failure to provide maximum air pollution control		C	5/18/99	6/18/99	5/18/99
Stationary	Failed source test	HPV	R	4/6/99	6/21/99	4/6/99
Stationary	Opacity exceedance		I	7/2/99	7/7/99	7/2/99
Stationary	Failure to obtain permit	HPV	R	1/15/98	8/5/99	Pending
Stationary	Data recovery violations		R	8/2/99	8/5/99	8/2/99
Portable	Opacity violations		I	8/4/99	8/18/99	8/4/99
Stationary	Exceedance of production limitation		R	5/27/99	9/15/99	5/27/99
Stationary	Opacity exceedance		I	9/14/99	9/28/99	9/14/99
Stationary	Failure to permit and notify		R	9/14/99	10/15/99	9/14/99

Source Category	Description of Violation	Significance of Violation (SV or HPV)	Method of Discovery	Date of Discovery	Date of Follow-up NOV Issued	Date Compliance Achieved
Stationary	Failure to perform source tests		R	10/99	10/22/99	10/22/99 (CS)
Stationary	Operating without permit		R	11/3/99	11/10/99	11/23/99 (CS)
Stationary	Excess SO <sub>2</sub> emissions	HPV	R	1/26/00	3/17/00	1/26/00
Stationary	Excess SO <sub>2</sub> emissions	HPV	R	8/99	3/27/00	3/3/00

SV = Significant Violator, HPV = High Priority Violation (EPA definitions for significance)

Methods – R = Report Review, I = Inspection and C = Complaint Response

CS = Compliance Schedule In Place

Table 33. Status and number of complaints related to the Air Quality Act managed by the Enforcement Division during FY99-FY00.

Status	General Air Quality	Open-Burning	Dust	Emissions	Odors
Active: under investigation by ENFD	0	0	0	2	1
Active: under investigation by program	0	1	2	9	0
Investigated and closed by ENFD	3	103	47	30	30
Investigated and closed by program	1	20	42	104	37
Referred to another agency	4	9	55	11	5
Enforcement action requested for resolution	0	2	1	3	0
Total	8	135	147	159	73

## 5. Enforcement Activities

Table 34. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Clean Air Act of Montana.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Clean Air Act	46	11	22	13	4	3	1	1	0	0	5	1	31
Total	46	11	22	13	4	3	1	1	0	0	5	1	31

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 35. Facts about the individual enforcement actions that were initiated during the biennium under the Clean Air Act of Montana.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
Clean Air Act	01/04/94	Civil	Closed	Allied Paving, Inc.	Missoula	Failure to obtain permit, opacity violations	\$20,000	
Clean Air Act	10/04/96	Adm	Closed	Columbia Falls Aluminum Co.	Flathead	Emission violation	\$32,000	
Clean Air Act	10/07/96	Civil	Closed	Fischer Sand & Gravel	Stillwater	Opacity violation	\$30,000	
Clean Air Act	04/03/97	Adm	Closed	Montana Refining Company	Cascade	Failure to comply with permit	\$20,000	
Clean Air Act	12/18/97	Adm	Closed	Yellowstone Energy Partnership LLC	Yellowstone	Failure to report emission violation	\$45,915	
Clean Air Act	02/17/98	Adm	Closed	Montana Power Company	Rosebud	Failure to comply with permit	\$36,000	
Clean Air Act	4/21/98	Adm	Closed	Stone Container Corporation	Missoula	Emission violation	\$ 5,200	
Clean Air Act	05/28/98	Adm	Closed	NRC Pipeline, LLC	Glacier	Failure to test	\$ 820	
Clean Air Act	07/15/98	Adm	Closed	Ravalli County Road Department	Ravalli	Failure to obtain a permit	\$ 3,231	
Clean Air Act	07/30/98	Adm	Closed	Stone Container Corporation	Missoula	Emission violation	\$ 1,000	
Clean Air Act	08/18/98	Adm	Closed	Donaldson Bros. Ready-Mix	Ravalli	Failure to obtain a permit	\$ 4,277	
Clean Air Act	8/18/98	Adm	Closed	Exxon Company USA	Yellowstone	Emission violation	\$ 9,800	
Clean Air Act	09/07/98	Adm	Closed	Montana Resources, Inc.	Silver Bow	Failure to test: failure to report	\$ 7,600	
Clean Air Act	12/07/98	Adm	Closed	Xeno, Inc.	Blaine	Failure to obtain a permit	\$ 2,800	
Clean Air Act	01/07/99	Adm	Closed	Mountain, Inc	Musselshell	Voluntary permit revocation		
Clean Air Act	01/07/99	Adm	Closed	Blahnik Construction	Ravalli	Voluntary permit revocation		
Clean Air Act	01/07/99	Adm	Closed	Sutton Construction Services	Missoula	Voluntary permit revocation		
Clean Air Act	01/07/99	Adm	Closed	Right Way Construction	Beaverhead	Failure to pay fees		
Clean Air Act	01/07/99	Adm	Closed	Wipps Trucking and Excavation	Lake	Failure to pay fees		
Clean Air Act	01/07/99	Adm	Closed	Valdus Group	Statewide	Voluntary permit revocation		
Clean Air Act	01/08/99	Adm	Closed	Chovanak Corporation	Jefferson	Voluntary permit revocation		
Clean Air Act	02/16/99	Adm	Closed	Daktanna Paving, LLC	Statewide	Voluntary permit revocation		
Clean Air Act	02/16/99	Adm	Closed	Johnson Brothers Contracting	Mineral	Open burning violation	\$ 520	
Clean Air Act	4/15/99	Adm	Closed	Saint Labre Indian School	Rosebud	Voluntary permit revocation		
Clean Air Act	5/19/99	Adm	Closed	Exxon Company USA	Yellowstone	Emission violation	\$47,250	
Clean Air Act	06/30/99	Adm	Closed	Empire Sand & Gravel	Yellowstone	Voluntary permit revocation		
Clean Air Act	07/27/99	Adm	Closed	Baltrusch Construction, Inc.	Hill	Voluntary permit revocation		
Clean Air Act	09/13/99	Adm	Closed	Earth Movers Construction	Big Horn	Failure to pay fees		
Clean Air Act	11/12/99	Adm	Closed	Smurfit Stone Container	Missoula	Failure to comply with permit	\$11,700	
Clean Air Act	01/03/00	Adm	Closed	Pine Gas Gathering, LLC	Wibaux	Failure to test, failure to report	\$ 2,478	
Clean Air Act	03/31/00	Adm	Closed	Garlick Helicopters	Ravalli	Open burning violation	\$ 595	
Clean Air Act	11/12/99		Development	Holly Sugar Corporation	Richland	Failure to obtain a permit		
Clean Air Act	03/13/00		Development	Louisiana-Pacific Corporation	Missoula	Failure to obtain a permit		

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
Clean Air Act	04/25/00		Development	Western Sugar Company	Yellowstone	Emission violation		
Clean Air Act	06/18/00		Development	Conoco, Inc	Yellowstone	Emission violation		
Clean Air Act	01/07/00		Vacated		Statewide	Voluntary permit revocation		
Clean Air Act	01/08/98		Referred	Montana Refining Company	Cascade	Failure to comply with permit		
Clean Air Act	4/14/97	Civil	Litigation	Montana Partners in Wood	Flathead	Failure to obtain permit, opacity violations		
Clean Air Act	10/23/98	Adm	Litigation	MCW Transmission, LP	Liberty	Failure to test	\$ 3,599	
Clean Air Act	08/18/99	Adm	Litigation	American Chemet	Lewis & Clark	Failure to operate pollution control equipment properly	\$ 4,350	
Clean Air Act	04/14/97	Adm	Under Order	Preferred Paving	Flathead	Failure to obtain a permit	\$10,000	
Clean Air Act	01/08/98	Adm	Under Order	Montana Sulphur and Chemical Co.	Yellowstone	Failure to report emission violation	\$45,915	
Clean Air Act	11/06/98	Civil	Under Order	Asarco, Inc	Lewis & Clark	Emission violation	\$80,000	
Clean Air Act	01/07/99	Adm	Under Order	Preferred Paving, Inc.	Flathead	Permit Revocation		
Clean Air Act	08/26/99	Adm	Under Order	Ash Grove Cement Company	Lewis & Clark	Emission violation	\$10,000	\$ 9,000
Clean Air Act	09/28/99		Withdrawn			Voluntary permit revocation		

## **C. INDUSTRIAL AND ENERGY MINERALS BUREAU**

### **Opencut Mining Act, 82-4-401, et seq., MCA**

#### **1. Program Description**

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial. The Opencut Mining Act regulates and requires reclamation of land mined for sand, gravel, bentonite, clay, peat, topsoil, and scoria, by any party, on any land (except tribal) in Montana.

The Opencut Program goals are the reclamation and conservation of land subject to mining, as well as the following:

- a. Effectively, consistently, and fairly administer the Act by working with industry, landowners and concerned citizens to ensure reclamation.
- b. Provide and retain technically competent staff who possess exemplary communication skills to allow a free exchange of ideas and who are able to accept or offer alternatively effective reclamation methods or actions.

#### **2. Activities and Efforts to Promote Compliance Assistance and Education**

Program staff strive to maintain consistent, fair administration, together with a commitment to serve the regulated and non-regulated community. They offer solutions when possible, and enforcement when necessary. The program's primary goal is the reclamation of mined land by utilizing effective communication, cooperation and trust. Legal actions are also a tool, but they should be the ones used least frequently and usually when environmental harm is affected and/or the violation shows irresponsible negligence.

According to program staff, the strongest incentives for compliance with Opencut regulations are agency-generated, because none of the operators "enjoy" receipt of NOVs and civil penalties, even though the penalty amount may seem insignificant. They feel that there are a certain number of operators who would comply and do an excellent job of reclamation without government monitoring. For some however, even though not necessarily correct, they feel compliance costs money and they lose an economic advantage for the bid process and/or profit.

##### *Technical Assistance*

The Opencut Program assists the regulated community and the general public by providing information and technical expertise on opencut-mining related questions. The program is able, within staff resources, to provide one-on-one personal assistance to members of the regulated community. This assistance is available through field offices and from the main Helena office.

##### *Inspections*

The program has the authority to inspect (82-4-425, MCA) lands subjected to opencut mining to determine whether the provisions of the Opencut Mining Act have been complied with.

The Opencut Program's formal inspection and enforcement procedures are documented in their Policy and Procedures Manual, in place since 1987, revised in 1990 and 1998 with the addition of form changes. Other changes in document preparation have taken place periodically. This manual is used by all inspectors so that all contractees will be held to the same standards.

The following chart represents the number of routine inspections conducted by geographic area. In May 2000, a fourth region was made from counties originally in the previous three regions.

Table 36.

Region	FY 99	FY 2000
Kalispell (NW)	353	207
Helena (SW)	351	164
Billings (NE)	318	185
Billings (SE)	until 5/00 included in Billings NE	45 (May 1 - June 30, 2000)

### **3. Size and Description of Regulated Community**

Opencut mining regulations affect those opencut mine operators who remove a cumulative total (at one site or many) of 10,000 cubic yards of material or more, or from a site that has already been mined of 10,000 cubic yards. At this level of activity operations become regulated.

Consistent with the activities noted above, the Opencut Program interacts with four primary regulated communities: government (primarily counties, but some cities and federal and state agencies), fixed-base operators, highway contractors, and bentonite miners. Additional information on those regulated through the Opencut Mining Program is provided below.

At least one opencut mining operation exists in each of Montana's 56 counties, from low-elevation alluvial deposits, to high-elevation glacial areas, to the bentonite fields of Eastern Montana. Operations range in scale from 1 acre to over 1,000 acres in size. The total permitted acreage has remained relatively constant over the years, with new operation acreage replacing acreage released from bond.

Approximately 5% of the Opencut Program contracts are for operations on federal lands, 5% are for operations on state lands, and 90% are on private lands. Approximately 25% of opencut operators are mining their own land; the remainder have received permission from the landowner.

The duration of a mining operation in conjunction with a specific highway project is typically 3-4 years; permanent based operations may last from 5-50 years. Most operators have 2-3 active operations at a time; the largest operator has 15 concurrent operations. A number of large highway contractors have up to 60 operations at some stage of development or reclamation.

#### ***Portion In Compliance***

Opencut operators may be out of compliance, but if they correct the situation, they may not be issued a violation nor penalized depending on environmental harm, negligence or history. The Opencut Program has defined a "violation" upon issuance of a Notice of Violation (NOV). Significant violations are defined as those which cannot be waived. However, new DEQ procedures may indicate existence of a violation even if an NOV is not issued.

#### 4. Number, Description, Method of Discovery and Significance of Non-compliance

The majority of violations in the Opencut Program are discovered through inspections as shown in Table 36.

Table 37. Status and number of complaints related to the Opencut Mining Act managed by the Enforcement Division during FY99-FY00.

Status	Gravel Pits
Active: under investigation by ENFD	0
Active: under investigation by program	3
Investigated and closed by ENFD	5
Investigated and closed by program	4
Referred to another agency	1
Enforcement action requested for resolution	0
Total	13

#### 5. Response to Non-compliances

For each significant violation, DEQ has issued a warning letter, a notice of violation with proposed penalty, and a findings of fact, conclusion of law and order. The Department uses a “point” system to calculate civil penalties for opencut violations. Points are assigned based on history seriousness, negligence and good faith, as described below.

1. Operator’s History of Non-compliance (no maximum number of points): Please see 82-4-441(2), MCA.
  - A. Four points for each similar violation (e.g., soil salvage, failure to reclaim, etc.) over the last three years.
2. Seriousness of Violation (maximum 18 points; includes actual and/or potential harm):
3. Negligence (maximum 18 points):
  - A. Ordinary Negligence (maximum 4 points),
  - B. Irresponsible Negligence (maximum 8 points), or
  - C. Gross Negligence (maximum 18 points).
4. Good Faith (potential of 8-point maximum credit).

The bureau’s manual provides guidance in calculating points. Penalty amounts are \$50 per point, with a minimum of \$100 and a maximum of \$1,000 per day. A “day” is the day the action occurred that resulted in the violation (e.g., failure to submit a report is a one-time occurrence, this is considered one day of violation, even if it takes two weeks to correct). Penalties for subsequent days that the violating activity occurs are assessed at the same rate.

Resolution of Non-compliances. There is no data recorded in this category, but as noted on previous pages, most violations are for operating without a contract, failure to reclaim, or failure to salvage soils. Usually the violator secures a contract, reclaims or has a bond forfeited, begins to salvage soils correctly, and/or corrects other problems.

## 6. Trends

Generally, operators comply with opencut regulations, especially those who have been in the business for a number of years and/or operate multiple sites in response to road construction projects. There are, however, a large number of new opencut operators taking part in the increasing commercial, residential, and infrastructure development in many areas of the state. With many of these operators, the process becomes one of education. In some cases, there is adamant objection to any degree of compliance with mining regulations; these are more difficult cases to bring into compliance. Often the only tool that will work is the Notice of Violation and concurrent civil penalties.

The Opencut Program generally issues 12-15 violations annually. To date, the program has forfeited 26 bonds, most due to financial difficulty situations (i.e., bankruptcy).

Trends in compliance with opencut rules and requirements are illustrated in Table 19. As shown, the number of contractees has remained relatively constant, and the number of non-compliances has remained relatively low. As shown in this figure, there were over 2,000 contractees in 1985 and one non-compliance; in 1990 there were over 2,200 contractees and 17 non-compliances; and in 1995, there were about 2,200 contractees and 10 non-compliances. Program staff feel that both numbers and types of violations are stable. They note that it is possible that with the increasing number of operators supplying subdivision and infrastructure development, that some will be reluctant to comply with applicable mining and reclamation statutes.

## 7. Enforcement Activities

Table 38. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Opencut Mining Act.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Opencut Mining Act	24	10	5	9	2	0	0	2	0	0	9	1	11
Total	24	10	5	9	2	0	0	2	0	0	9	1	11

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 39. Facts about the individual enforcement actions that were initiated during the biennium under the Opencut Mining Act.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
OC	06/068/95	CIVIL	Closed	Salveson Construction	Big Horn	Failure to reclaim	\$ 660	
OC	09/02/97	ADM	Closed	Montana Material Products	Gallatin	Failure to obtain permit	\$ 600	
OC	11/19/97	ADM	Closed	Cecil McKinley	Flathead	Failure to obtain permit	\$1,000	
OC	11/19/97	ADM	Closed	Big Sky Lumber Company	Gallatin	Failure to reclaim	\$ 450	
OC	05/18/98	ADM	Closed	Montana Ready-Mix, LTD	Gallatin	Failure to obtain a permit	\$1,000	
OC	06/10/98	ADM	Closed	Department of Fish, Wildlife & Parks	Lincoln	Failure to obtain a permit	\$1,000	
OC	07/22/98	ADM	Closed	City of Livingston	Park	Failure to obtain a permit		
OC	08/25/98	ADM	Closed	Arlen Franz	Richland	Failure to obtain a permit	\$1,000	
OC	05/06/99	ADM	Closed	United Materials, Inc.	Cascade	Failure to obtain a permit	\$2,000	\$1,000
OC	09/29/99	ADM	Closed	Pumco, Inc.	Granite	Failure to obtain a permit	\$1,000	
OC	11/22/99	ADM	Closed	Blahnik Construction	Lewis & Clark	Failure to obtain a permit	\$ 725	\$ 400
OC	04/14/00		Development	Leo Klein, Jr.	Richland	Failure to submit bond		
OC	06/18/98		Vacated		Fallon	Failure to obtain a permit		
OC	06/24/98		Vacated		Richland	Failure to obtain a permit		
OC	12/08/97	ADM	Under Order	Preferred Paving, Inc.	Flathead	Failure to obtain a permit	\$1,000	
OC	12/18/97	ADM	Under Order	Mission Valley Concrete	Lake	Failure to obtain a permit	\$1,000	
OC	08/25/98	ADM	Under Order	Donaldson Brothers Ready-Mix (North Pit)	Ravalli	Failure to obtain a permit	\$1,000	
OC	08/25/98	ADM	Under Order	Donaldson Brothers Ready-Mix (South Pit)	Ravalli	Failure to obtain a permit	\$1,000	
OC	07/19/99	ADM	Under Order	Vance Brash	Flathead	Failure to obtain a permit	\$1,000	
OC	10/25/99	ADM	Under Order	Jack Paulson	Lake	Failure to submit bond	\$ 875	
OC	12/14/99	ADM	Under Order	Hi-Line Ready-Mix	Toole	Failure to obtain permit, failure to comply with permit	\$1,575	
OC	03/22/00	ADM	Under Order	Richards Development Co.	Missoula	Failure to comply with permit	\$ 600	
OC	03/30/00	ADM	Under Order	Russ Purcell	Carbon	Failure to obtain permit	\$ 450	

<sup>1</sup> OC = The Opencut Mining Act

## **Montana Strip and Underground Mine Reclamation Act, 82-4-201 et seq., MCA**

### **Coal and Uranium Mining Program**

#### **1. Program Description**

Montana's constitution makes it clear that all lands disturbed by the taking of mineral resources must be reclaimed. Both state and federal law provide for permitting, inspection and enforcement, public involvement, and selective denial of development. Coal and uranium mining regulations include provisions for permit revocation for a pattern of violations. This is the most stringent of the regulatory provisions. Furthermore, enforcement is primarily mandatory, with very little discretion of whether or not to initiate enforcement.

The Coal and Uranium Program has identified the following program goals:

- a. Administer and enforce the Montana Strip and Underground Mine Reclamation Act, the Montana Strip and Underground Mine Siting Act, the Montana Environmental Policy Act, and their respective administrative rules, to the extent provided by law, to allow mineral development while protecting the environment.
- b. Administer and enforce a reclamation program that complies with Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977.
- c. Administer the law in a fair and unbiased manner.
- d. Maintain and improve Montana's clean and healthful environment for present and future generations.
- e. Protect environmental life-support systems from degradation.
- f. Provide for the orderly development of coal resources, through strip or underground mining, to assure the wise use of the state's resources and to prevent the loss of coal resources through coal conservation.
- g. Prevent undesirable land, surface, and groundwater conditions detrimental to general welfare, health, safety, ecology, and property rights.
- h. Prevent unreasonable degradation of Montana's natural resources.
- i. Restore, enhance and preserve Montana's scenic, historic, archaeologic, scientific, cultural and recreational sites.
- j. Achieve effective reclamation of all lands disturbed by the taking of coal or uranium.
- k. Maintain state administration of the coal mining regulatory program.
- l. Strive to make permitting decisions in a timely manner.
- m. Promote effective, efficient and economic program management.

#### **2. Activities and Efforts to Promote Compliance Assistance and Education**

The Coal and Uranium Program inspects mining operations on a schedule mandated by the Administrative Rules. Each active site must be inspected monthly, with one inspection per quarter needing to be a complete inspection. For each inactive site, one complete inspection per quarter is required. In FY99, for a regulated community of 13 active and 5 inactive (reclamation only) sites, the program performed 95 complete inspections and 99 partial (some discipline-specific) inspections. In FY00, for a regulated community of 13 active and 4 inactive (reclamation only) sites, the program performed 86 complete inspections and 102 partial (some discipline-specific) inspections. These numbers do not include bond release inspections.

Staff feel that permit conditions and regular inspections are very effective in promoting compliance. Additionally, the blend of staff knowing both permitting and on-the-ground provisions is highly effective in protecting against non-compliance. As staff share information from mine to mine and stay current with the best technology available, many internal technical assistance opportunities occur. Staff try to head off violations through effective permit conditions, knowledge of potential problems, intra-staff technical assistance, frequent site inspections, and familiarity with permit conditions. They do not hesitate, however, to issue a violation when one is discovered and cannot be corrected while the inspector is on site.

Staff interact with company counterparts and/or contacts on a frequent basis. Using telephone, fax and e-mail, issues such as regrading questions and soiling replacement can be worked out before either maintenance items or notices of non-compliance need to be issued.

#### *Compliance Tools Available and Used*

The Coal and Uranium Program's formal inspection and enforcement procedures are documented in its Policy and Procedures for Inspection and Enforcement, in place since 1991, and currently under revision. Inspection kits have been used since the beginning of the program. These kits have included field maps, mine-specific conditions lists, discipline-specific inspection procedures, and general processing procedures. Air quality inspection guidelines were formalized in a manual in 1994, which is available for the inspectors to use. Inspectors are also encouraged to attend Air Quality training "Smoke School". During inspections, maintenance items -- items that could lead to a non-compliance if not rectified -- are noted and the company is informed of the items. Some are completed while the inspector is still on site, while others are checked on a monthly basis during subsequent inspections. A chart showing history of maintenance items over the past five fiscal years is shown.

Table 40. Maintenance Items

Year	FY 96	FY 97	FY 98	FY 99	FY 00
Issued	208	136	82	124	123
Completed	188	182	109	119	124
Active at Year End	52	51	33	44	43

#### *Incentives for Compliance*

According to program staff, the greatest incentives for compliance with coal and uranium rules and regulations are violation provisions which define a pattern of violations which may result in permit revocation, an escalating process (violations, cessation orders, suspensions, revocations), and enforcement which occurs on the ground. Additionally, due to a nationwide tracking system for violators of coal mining regulations which directly blocks violators from obtaining permits if violations are not in the process of being adequately resolved, permittees are likely to resolve violations more readily. Such permit blocks, tracked in a nationwide system, affect major corporate activities such as buying and selling mines, thus making compliance a highest priority, not a choice.

In general terms, staff duties are allocated as 60% permitting and 30% inspection and enforcement, but many enforcement actions involve permitting actions as well; budgeting is not directly driven by this percentage.

#### *Technical Assistance*

Through DEQ and OSM sponsored forums and seminars, the private sector is invited to instruction and demonstration of new and effective techniques for reclamation and advances in computer software and hardware. This is in addition to IEMB staff sharing their technical expertise and experience.

### **3. Size and Description of Regulated Community**

Consistent with the activities noted above, the Coal and Uranium Program interacts with one primary regulated community: prospectors, strip miners, and underground miners. This community is described below.

There are six major coal development companies active in Montana, most of which are located in southeastern Montana. Of these, one company holds six permits (Western Energy), other companies hold one or two permits. Permit areas of active mines range from 857 acres to over 20,000 acres. Strip-mined coal is typically extracted by shovel, processed on site, then shipped to other locations via rail, truck or conveyor. The typical production life of a coal mine averages 30-plus years.

There is currently no uranium mining in Montana; restrictions on deposition of radioactive substances in 75-3-303, MCA, limit the uranium mining methods that can be used in Montana.

Currently prospecting/exploration activities in Montana are limited to coal and are conducted by companies having operating mines in the state. These activities generally involve areas of potential expansions of existing mines. New area prospecting is limited.

Coal and Uranium Mining regulations consist of over 250 pages of rules. A deviation from any rule can result in a violation. With so many ways to be out of compliance, it is not unusual for a company to be served with one or two violations per year.

### **4. Number, Description, Method of Discovery and Significance of Non-compliance**

If a compliance problem can be corrected in the field and no resource was lost (such as soil lost to runoff), an operator will not be issued a Notice of Non-compliance nor penalized. The Coal and Uranium Program defines a "violation" as issuance of a Notice of Non-compliance (NON). "Major or Significant" violations would be issued as Cessation Orders (CO's) and would need to meet the definition of imminent harm.

During FY97 and FY98, the Coal and Uranium Program issued 17 NON's and 6 CO's (see Table 41). All of these were issued to mining operators. None of these violations were vacated. There were three repeat violators in that time period: Western Energy Company (2 NON's), Big Sky Coal Company (2 NON's), and Mountain Inc. (12 NON's and 6 CO's). During FY 99 and FY 2000, the Coal and Uranium Program issued 17 NON's and no CO's. Three violations were involved in a contested case hearing, and two were vacated. Three other violations were vacated following further investigation.

As shown for this time period, violations are typically of the following types: (1) actual on-the-ground violations which require equipment to perform work, (2) monitoring or reporting violations, (3) practice or method violations which require a revision to the permit to implement the practice, and (4) the violations which cannot be abated because a resource was lost.

Of the pending violations listed in Table 41, those with an identifier of \*-06-\* are pending in District Court, Roundup, MT as is 87-82244R-01. Those identified with \*-09-\* involve a deceased permittee, and bond has been forfeited on the site. Those identified with \*-10-\* also involve bond forfeiture. The surety for both companies with forfeited bonds is defunct and in receivership. The distribution of funds has been made and plans for reclamation are in process. DEQ is researching methods for clearing the above-referenced violations.

Table 41. Strip and Underground Mine Reclamation Act Violations Active in FY99 and FY00

Date Iss.	N.O.N.#	Violation	Points	Penalty	Status	Method of Discovery
April 85	85-06-01	Failure to submit Annual Report	13	8,060	Pending	Report Review
April 85	85-06-02	Construction of Building without Department review and approval	28	24,800	Pending	Inspection
Nov. 85	85-06-05	Removal of coal after issuance of Cessation Order	60	3,300	Pending	Inspection
Apr. 86	86-06-01	Failure to design, construct and maintain sediment control structure	20	12,400	Pending	Inspection
July 86	86-06-02	Main sediment pond full and overflowing; overflow pipe plugged	15	9,300	Pending	Inspection
Feb. 87	87-06-01	Failure to maintain sediment traps	40	62,000	Pending	Inspection
Mar. 87	87-06-02	Failure to submit annual Pond Certification reports	26	18,600	Pending	Report/File Review
Mar. 87	87-06-03	Failure to submit quarterly surface water monitoring reports for 1986	26	18,600	Pending	Report/File Review
June 87	87-82244R-01	Prospecting without a permit		15,000	Pending	Inspection
June 88	1	Mining in excess of 250 tons of coal without permit	55 x 30 days	127,500	Pending	Inspection
July 88	88-06-01	Leaking of oil onto regraded spoil	24	480	Pending	Inspection
Nov. 88	88-06-02	Late filing of renewal request			Pending	Report/File Review
Apr. 90	90-06-01	Failure to file annual report	13	260	Pending	Report/File Review
July 90	90-10-01	Failure to reinstate bond, permit, or pursue proper reclamation	55	127,500	Pending	Report/File Review
Aug. 90	90-06-02	Failure to maintain appropriate sediment control (small pond)	43	2,300	Pending	Inspection
Aug. 90	90-06-03	Failure to maintain appropriate sediment control (large pond)	41	2,100	Pending	Inspection
Sept. 91	91-09-01	Failure to reclaim mine site as approved in permit and under agreement	55	3,500	Pending	Inspection and File Review
July 92	92-09-01	Sediment from disturbed area deposited off permit area	21	420	Pending	Inspection
Sept. 92	92-10-01	Failure to maintain security of fan house, mine portal and vent adit	55 x 30 days	127,500	Pending	Inspection
Sept. 92	92-10-02	Failure to secure access as in 92-10-01	55 x 30 days	127,500	Pending	Inspection
June 94	94-10-01	Imminent danger to public health and safety -- unsecured adit	55 x 30 days	127,500	Pending	Inspection
July 94	94-10-02	Failure to abate NON/CO 94-10-01	55 x 30 days	127,500	Pending	File Review
July 97	97-17-01	Inadequate sediment control and diversion berm not constructed	36	1,600	Active	Inspection
Aug. 97	97-17-02	Failure to collect semi-annual groundwater samples	38	1,800	Active	Report/File Review
Sept. 97	97-17-01CO	Failure to abate NON 97-17-01	47 x 30 days	81,000	Active	File Review
Oct. 97	97-17-04	Failure to submit information required by 17.24.413(4) following issuance of Cessation Order	47	2,700	Active	File Review
Oct. 97	97-17-03	Failure to pay Abandoned Mine Land Reclamation Fees	42	2,200	Active	Database Query
Nov. 97	97-17-03CO	Failure to abate NON 97-17-03	48	84,000	Active	File Review
Nov. 97	97-17-05	Failure to submit Annual Report	48	2,800	Active	File Review
Dec. 97	97-17-05CO	Failure to abate NON 97-17-05	52 x 30 days	96,000	Active	File Review
Dec. 97	97-17-04CO	Failure to abate NON 97-17-04	57 x 30 days	111,000	Active	File Review
Jan. 98	98-17-01	Failure to conduct wildlife monitoring as required in permit	49	2,900	Active	Report/File Review
Mar. 98	98-17-02	Failure to submit MPDES reports since June 1997	39	1,900	Active	Report/File Review
Mar. 98	98-17-03	Failure to submit 1997 Semi-Annual Hydrology report, failure to submit all information with 1996 Hydrology report	43	2,300	Active	Report/File Review
Apr. 98	98-17-02CO	Failure to abate NON 98-17-02	39 x 30 days	57,000	Active	File Review
May 98	98-17-03CO	Failure to abate NON 98-17-03	48 x 30 days	84,000	Active	File Review
July 98	98-03-01	Soiled & seeded drainage channel prior to approval			Vacated	Inspection
Dec. 98	98-03-02	Conducted blast outside of published time frame	11	220	done	Report Review
July 98	98-05-02	Failure to submit drainage channel design	11	0	Vacated	Inspection/File Review
Aug. 98	98-05-03	Failure to conduct blasting within published time frame	10	200	Done	Report Review

Date Iss.	N.O.N.#	Violation	Points	Penalty	Status	Method of Discovery
Aug. 98	98-05-04	No warning siren prior to blasting	15	200	Done	Inspection
Aug. 98	98-05-05	Bulldozer operator disturbed reclamation	0	0	Vacated	Inspection
Sep. 98	98-05-06	Coal shots resulted in flyrock being cast outside containment area	16	0	Vacated	Inspection
Oct. 98	98-05-07	Failure to control sediment from disturbed area	31	1,100	Done	Inspection
Mar. 99	99-02-01	February MPDES report indicated TSS exceedence	24	480	Done	Report/File Review
May 99	99-02-02	Failure to perform water analysis as required	0	0	Vacated	Report Review
July 99	99-03-01	Portion of soil stockpile outside permit area	24	480	Done	Inspection
July 99	99-03-02	Fields seeded perpendicular to contour	13	260	Done	Inspection
July 99	99-04-01	An unapproved pole-type building was constructed	21	420	Done	Inspection
June 99	99-12-01	Vehicle driven in ephemeral drainage causing damage	20	400	Done	Inspection
Nov. 99	99-11-19	Operator bladed roadway prior to approval of Minor Revision	16	320	Done	Self Reporting
Feb. 00	00-01-01	Failure to blast between sunrise & sunset (West Permit)	16	320	Done	Self Reporting
Feb. 00	00-07-01	Failure to blast between sunrise & sunset (East Permit)	9	200	Done	Report Review; Self Reporting
Feb. 00	00-11-01	Failure to submit Annual Report	9	Waived	Done	File Review
Feb. 00	00-16-01	Failure to submit Annual Report	9	Waived	Done	File Review
May 00	00-05-01	Failure to conduct blasting within airblast standards	18		Hearing	Self Reporting

Table 42. Status and number of complaints related to the Strip and Underground Mine Reclamation Act managed by the Enforcement Division during FY99-FY00.

Status	Coal Mines
Active: under investigation by ENFD	0
Active: under investigation by program	0
Investigated and closed by ENFD	11
Investigated and closed by program	4
Referred to another agency	0
Enforcement action requested for resolution	0
Total	15

## **5. Response to Non-compliances**

As discussed above in *Discovery of Violations*, violations may require on-the-ground work, such as filling in rills and gullies, upgrading sediment control, or repairing unauthorized disturbance of native ground. Others may require a permitting action, typically a minor revision, to implement a revised or new way of doing something. Violations which involve monitoring practices may need to be resolved by minor revisions to a monitoring plan, or may be such that data were not collected and are forever lost. Some violations specifically address reclamation practices, such as regrading of the surface, soil replacement or seeding. Resolution would involve adjustment of reclamation practices which provide compliance with the rules and permit. Violations which involve a water effluent problem may involve water treatment and sediment control structures being in place and functioning or revising treatment practices or structures.

### *Current Compliance Priorities*

Agency staff have identified the following priorities for the Coal and Uranium Program:

- Assuring that offsite damages do not occur
- Assuring that contemporaneous reclamation occurs
- Assuring the health and safety of citizens, e.g., as associated with blasting practices and structural integrity of sediment control features (dams and embankments)
- Assuring that coal conservation practices are implemented (all marketable and minable coal is recovered as required in the mining operation)
- Assuring that long-term hydrologic impacts are minimized.

## **6. Trends**

Over the last 10 years, violations were issued at a rate of 10 to 25 violations per year. An unusually high number of cessation orders were issued to one company in FY97 and FY98. Cessation Orders are typically issued to inactive operations that are not maintaining reclamation bonds. The last Show Cause Order to be issued was in 1997 and resulted in revocation of the permit.

## 7. Enforcement Activities

Table 43. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Strip and Underground Mine Reclamation Act.

Statute	Total Caseload for FY99 - FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Strip and Underground Mine Reclamation Act	38	17	10	11	0	0	0	5	0	0	17	1	15
Total	38	17	10	11	0	0	0	5	0	0	17	1	15

<sup>1</sup>Case status explanations:

**Case Development** - Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** - Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** - Case referred to another agency for case management.

**Vacated** - Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** - Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** - Case that is discontinued temporarily or permanently but is not closed.

**Under Order** - Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** - Enforcement Request was withdrawn before case development began.

**Closed enforcement case** - Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 44. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Strip and Underground Mine Reclamation Act.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
SM	07/28/97	ADM	Closed	Western Energy Co.	Rosebud	Failure to comply with permit	\$1,000	
SM	08/06/98	ADM	Closed	Westmoreland Resources, Inc.	Rosebud	Failure to adhere to blasting schedule	\$ 200	
SM	08/21/98	ADM	Closed	Westmoreland Resources, Inc.	Rosebud	Failure to warn prior to blasting	\$ 200	
SM	11/04/98	ADM	Closed	Westmoreland Resources, Inc.	Rosebud	Failure to control sediment	\$1,100	
SM	12/21/98	ADM	Closed	Western Energy Co.	Rosebud	Failure to notify non-adherence to blasting schedule	\$ 220	
SM	03/19/99	ADM	Closed	Knife River Coal Corporation	Richland	Total Suspended Solids exceedence	\$ 480	
SM	07/20/99	ADM	Closed	Spring Creek Coal Company	Big Horn	Unauthorized channel crossing	\$ 400	
SM	07/27/99	ADM	Closed	Western Energy Co.	Rosebud	Unauthorized placement of soil stockpile	\$ 480	
SM	07/27/99	ADM	Closed	Big Sky Coal Company	Rosebud	Construction of unapproved structure	\$ 420	
SM	07/27/99	ADM	Closed	Western Energy Co.	Rosebud	Field seeded perpendicular to contour	\$ 260	
SM	11/22/99	ADM	Closed	Decker Coal Company	Big Horn	Failure to obtain approval before blading new roadway	\$ 320	
SM	02/08/00	ADM	Closed	Decker Coal Company	Big Horn	Failure to blasting between sunrise and sunset	\$ 200	
SM	02/23/00	ADM	Closed	Blaine Warburton	Blaine	Failure to submit annual report	\$ 200 waived	
SM	02/23/00	ADM	Closed	Blaine Warburton	Blaine	Failure to submit annual report	\$ 200 waived	
SM	05/04/00	ADM	Withdrawn			Request for show cause hearing on pattern of blasting violations		
SM	07/08/98	ADM	Vacated			Soiling and seeding drainage channel prior to approval		
SM	07/30/98	ADM	Vacated			Failure to submit drainage channel design		
SM	08/28/98	ADM	Vacated			Bulldozer disturbed reclamation		
SM	09/14/98	ADM	Vacated			Failure to control flyrock		
SM	06/16/99	ADM	Vacated			Failure to perform required water analysis		
SM	08/11/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to monitor groundwater	\$ 1,800	

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
SM	08/22/97	ADM	Under Order	Mountain, Inc.	Musselshell	Inadequate sediment control	\$ 1,600	
SM	09/25/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$ 81,000	
SM	09/25/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to pay fees	\$ 2,200	
SM	10/12/97	ADM	Under Order	Mountain, Inc.	Musselshell	Show cause order		
SM	11/17/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to submit requested information	\$ 2,700	
SM	11/18/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to report	\$ 2,800	
SM	12/12/97	ADM	Under Order	Mountain, Inc.	Musselshell	Order of suspension of permit		
SM	12/15/99	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$ 84,000	
SM	12/26/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$ 96,000	
SM	12/26/97	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$111,000	
SM	02/03/98	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to conduct wildlife monitoring;	\$ 2,900	
SM	03/06/98	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to submit hydrology report	\$ 2,300	
SM	03/11/98	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to submit MPDES reports	\$ 1,990	
SM	04/15/98	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$ 57,000	
SM	05/11/98	ADM	Under Order	Mountain, Inc.	Musselshell	Failure to abate non-compliance	\$ 84,000	
SM	05/18/00	ADM	Under Order	Westmoreland Resources, Inc.	Big Horn	Failure to conduct blasting within airblast standards	\$ 360	

<sup>1</sup> SM = Montana Strip and Underground Mine Reclamation Act

## **D. WATER PROTECTION BUREAU**

### **Montana Water Quality Act, 75-5-101, et seq., MCA**

#### **Water Quality Discharge Permit Section**

##### **1. Program Description**

The Water Quality Discharge Permit Section regulates discharges of pollutants to state waters, including both surface waters and groundwater, in accordance with the Montana Pollutant Discharge Elimination System (MPDES) and Montana Groundwater Pollution Control System (MGWPCS). The section issues discharge permits to public facilities, such as municipal, publicly-owned wastewater treatment plants, and various industrial operations including coal and hard-rock mines, remediation and reclamation sites, petroleum refineries, lumber mills, power plants, meat packers, and fish farms. Each permit generally specifies numeric limitations on concentrations of pollutants allowed in wastewater discharged to state waters, and limits the quantity of wastewater that may be discharged.

In addition to these municipal and industrial facility permitting programs, four additional programs issue permits for storm water runoff, confined animal feeding operations, discharges to groundwater, and short-term changes in water quality caused by construction projects, and related activities, regulated under Section 75-5-318, MCA and Section 401 of the federal Clean Water Act. The Water Quality Discharge Permits Section also issues authorizations under 75-5-308, MCA for changes in water quality caused by emergency remedial activities and pesticide application.

The Storm Water Program issues permits to public and private concerns engaging in activities that may result in storm water runoff conveying pollutants to state waters. Industrial and mining storm water discharge permits are issued to facilities where activities, such as storage of materials, have the potential to allow storm water runoff to come into contact with pollutants, then mobilize and transport them into state waters. Construction storm water discharge permits are issued for activities disturbing five or more acres, or one or more acre(s) within 100 feet of state surface waters. All three types of storm water permits generally require “best management practices” be used to prevent or minimize pollution of state waters by contaminated storm water runoff.

The Concentrated Animal Feeding Operation (CAFO) Program issues permits to operations where 1000 or more “animal units” are confined for 45 or more days a year, and those with 301 to 1000 “animal units” where pollutants are discharged into state waters directly, or reach them via ditches or other conveyances. These permits require “best management practices” to prevent or minimize overland runoff or underground transport of animal waste pollutants to state waters.

The Groundwater Pollution Control Program issues permits to public and private concerns conducting activities having the potential to contaminate state groundwaters. Sources of groundwater pollution include sewage ponds, land application of wastes, and systems designed to treat or dispose of wastewater by infiltration and percolation.

The 318/401 Program regulates short-term changes in water quality caused by construction, and related activities, through authorizations issued under Section 75-5-318, MCA, and certifications, issued under Section 401 of the federal Clean Water Act, for projects involving discharge or placement of fill material into state waters, including wetlands. The 318/401 program also coordinates with conservation districts that issue permits under numerous Montana statutes, including the Natural

Streambed and Land Preservation Act, Stream Protection Act, Streamside Management Zone Law, and Floodplain and Floodway Management Act. These permits stipulate ways in which regulated activities may be conducted, while maintaining water quality to standards specified in the Montana Water Quality Act. In addition these permits are intended to protect wetlands, or require their replacement where destroyed.

## **2. Activities and Promoting Compliance**

### *Information, Education and Technical Assistance*

All staff of the Water Quality Discharge Permit Section interact daily with members of the public, usually belonging to the regulated community of wastewater dischargers, as shown in Table 45. Initiating and receiving telephone calls, writing letters, and scheduling and attending meetings, to provide information to actual and potential permittees and other interested citizens, is integral to the work of staff in all of the section's programs. Technical assistance commonly includes answering questions concerning permitting procedures, such as whether a proposed activity may be permitted, and what conditions a permit might stipulate. Also common are inquiries from already permitted dischargers concerning details of their permit conditions, and advice on how to meet those conditions. Discussion of alternative strategies for meeting numeric effluent limitations of a wastewater discharge permit may involve familiarity with various scientific fields, as well as working knowledge of wastewater treatment, heavy equipment operation, and other, divergent areas of expertise, in addition to knowing Montana water quality discharge permitting procedures.

Section staff generate and distribute written materials documenting the process of applying for, receiving and maintaining compliance with the various types of permits the section issues. Much of this information has also been made available on the internet. Public contact commonly involves referring people to, or providing them with, documentation containing answers to their questions. In addition, section staff regularly attend meetings to deliver presentations to, and attend presentations by, members of the regulated community, such as associations of agricultural producers, or wastewater treatment plant operators. Finally, section staff regularly exchange information, through meetings, presentations, newsletters, electronic mails and telephone conversations, with personnel from other governmental agencies, including local conservation districts, county health departments, county and state highway departments, numerous other state agencies, and the federal Environmental Protection Agency. Other activities important in promoting compliance include making each permit available for public review, then considering and responding to public comments, prior to issuance. Public meetings and hearings, held during the process of adopting rules for each of the section's programs, may promote compliance by improving public perception of the section's work.

### *Inspections*

Compliance inspections are performed by all of the Water Quality Discharge Permit Section programs. As detailed in Table 45, during FY99 and FY00 the bureau performed 103 MPDES inspections of municipal and industrial permittees, plus approximately 115 storm water, 37 CAFO, 3 ground water, and 117 318/401 inspections. Most inspections are scheduled as regular, periodic compliance checks of ongoing discharges, while others target activities and operations that have raised concerns, based on self-monitoring reports of permit violations, or complaints received. Occasionally, a discharger requests that section staff conduct an on-site review of their operations, usually to discuss strategies for maintaining, or returning to, compliance with permit conditions. Each inspection or site review provides opportunities for in-person discussion of permit requirements, compliance strategies and related technical assistance. Occasionally, an inspection results in discovery of violation(s), which are addressed by further technical assistance, violation letter(s) or enforcement action(s). The section

coordinates inspection activities with the EPA, and meets inspection schedules mandated by that agency.

### ***Enforcement Actions***

In cases where letters informing dischargers of permit violations, along with technical assistance, fail to result in compliance with permit conditions, section staff in all programs forward requests for enforcement activity to the DEQ Enforcement Division. The Enforcement Division enters each case into a tracking system, evaluates the severity of each violation, then takes enforcement action, such as issuing Administrative Orders or initiating litigation. These enforcement actions are commonly accompanied by assessment of penalties.

### **3. Size of the Regulated Community and Percent not in Compliance**

As of the end of June 2000, all section programs combined were administering 1,603 MPDES permits. Table 45 enumerates permits by type and shows numbers with compliance issues. Most issues were resolved by technical assistance. In total, 14% of permittees have been out of compliance with permit conditions *at some time* during the period from July 1, 1998 through June 30, 2000. The number of permittees with violations are enumerated by program in Table 46.

Table 45. Regulated Community and Water Quality Discharge Permits Section Overview.

Permits by Type	Permits with Violations	Percent with Violations	Technical Assist. Events	Inspections
MPDES 225	129	57	1108	103
Storm Water 451	10	3	2000	115
CAFO 71	3	4	846	37
Groundwater 25	0	0	96	3
318/401 831	83	10	570	117

Table 46. Permit Violations, Methods of Discovery, Violation Letters and Enforcement Requests by Permit Type for FY99 and FY00.

Violations by Permit Type	Method of Discovery			Violation Letters	Enforcement Requests
	Self-Monitoring	Inspection	Complaint		
MPDES 129	122	7	---	129	---
Storm Water 10	---	10	---	10	---
CAFO 3	---	---	3	6	1
Groundwater 0	---	---	---	---	---
318/401 83	---	45	38	20	5

### **4. Number, Description and Method of Discovery of Violations**

The number of permits with violations and the methods by which the violations were discovered and resolved are enumerated in Table 46. Permit violations detected through self-monitoring include exceedances of numeric effluent limitations for specific compounds discharged in wastewaters, and nonsubmittal or late submittal of Discharge Monitoring Reports. Through inspections and complaints, section personnel detect discharges from unpermitted outfalls, deviations from required operating, maintenance and reporting requirements, and failure to use "best management practices".

Table 47. Status and number of complaints and spills related to the Water Quality Act managed by the Enforcement Division during FY99-FY00.

Status	General Water Quality	Spills That Impacted or Threatened Water	Spills That Impacted Soil	MPDES	CAFO
Active: under investigation by ENFD	27	0	12	3	2
Active: under investigation by program	6	1	9	14	6
Investigated and closed by ENFD	154	46	368	13	9
Investigated and closed by program	163	4	14	11	4
Referred to another agency	6	1	12	1	2
Enforcement action requested for resolution	4	5	2	1	1
Total	360	57	417	43	24

Status	Municipal Waste Water	Nonpoint Source	Pesticides	Septic Drainfields	Other
Active: under investigation by ENFD	2	0	1	2	0
Active: under investigation by program	0	3	0	1	0
Investigated and closed by ENFD	13	21	5	32	26
Investigated and closed by program	4	5	1	7	2
Referred to another agency	1	9	14	26	30
Enforcement action requested for resolution	3	1	0	1	0
Total	23	39	21	69	58

## 5. How the Section has Addressed Non-compliance Events

In addressing permit violations detected in FY99 and FY00, the bureau has sent 165 violation letters, and submitted six enforcement requests to the Enforcement Division, as enumerated in Table 47. All section programs identify violations, and send violation letters, approximately every three months. Violation letters resulting from inspections are sent within 30 days of receiving results of laboratory analyses of samples collected during inspections. Violation letters resulting from complaints are sent within 30 days of the complaint investigation's completion. Violations occurring in the July 1, 1998 through June 30, 2000 time period that have not been referred for enforcement action have been corrected, or are in the process of being corrected, by the permittee concerned.

## 6. Enforcement Activities

Table 48. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Water Quality Act.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Water Quality Act	42	21	14	7	1	2	1	0	3	0	16	5	13
Total	42	21	14	7	1	2	1	0	3	0	16	5	13

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 49. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Water Quality Act.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed (\$)	Settlement Penalty (\$)
Water Quality Act	07/28/94	ADM	Closed	City of Dillon	Beaverhead	Permit violation.		
Water Quality Act	10/18/96	ADM	Closed	Singleton Trucking	Custer	Unauthorized discharge.		
Water Quality Act	03/21/97	ADM	Closed	Town of Stanford	Judith Basin	Permit violation, failure to report.		
Water Quality Act	03/31/97	ADM	Closed	Earlene Gaudin Jim Clark & Sons Excavating	Ravalli	Failure to obtain permit, unauthorized discharge.		
Water Quality Act	04/02/98	ADM	Closed	Barrett Minerals, Inc.	Beaverhead	Permit violation	14,000	14,000
Water Quality Act	05/20/98	ADM	Closed	City of Bozeman	Gallatin	Permit violation.	800	800
Water Quality Act	07/27/98	ADM	Closed	R. E. Miller & Sons Construction	Beaverhead	Unauthorized discharge.	3,600	3,600
Water Quality Act	07/27/98	ADM	Closed	American Renovation	Cascade	Failure to obtain a permit, placement of waste where it will pollute of state waters.	800	800
Water Quality Act	08/07/98	ADM	Closed	Morrison Knudsen Construction Department of Transportation	Park	Failure to obtain permit, unauthorized discharge.	21,000	14,700
Water Quality Act	10/29/98	ADM	Closed	Town of Harlowton COP Construction	Wheatland	Failure to comply with permit	2,100	1,000
Water Quality Act	02/24/99	ADM	Closed	Montana Power Company	Rosebud	Unauthorized discharge.	2,500	2,500
Water Quality Act	08/26/99	ADM	Closed	Pondera Hutterite Colony	Pondera	Unauthorized discharge.	4,200	4,200
Water Quality Act	04/10/00	ADM	Closed	Department of Transportation	Flathead	Unauthorized discharge.		
Water Quality Act	10/01/99		Development	Wisdom County Water & Sewer District	Beaverhead	Unauthorized discharge.		
Water Quality Act	06/23/00		Development	Pennsylvania Power and Light, Inc.	Rosebud	Unauthorized discharge		
Water Quality Act	07/01/92		Referred	Sleeping Buffalo Resort	Phillips	Unauthorized discharge, failure to report.		
Water Quality Act	08/29/96	CRM	Litigation	David Phillips	Granite	Failure to obtain permit		
Water Quality Act	05/23/97	ADM	Litigation	Yellowstone Feeders	Yellowstone	Failure to obtain permit, failure to pay fees.		
Water Quality Act	04/17/97	CIVIL	Stayed	U. S. Corps of Engineers	Lincoln	Standards violation		
Water Quality Act	04/17/97	CIVIL	Stayed	U. S. Corps of Engineers	Flathead	Standards violaton		
Water Quality Act	08/29/97	ADM	Stayed	David Philips	Granite	Failure to obtain a permit, Placement of waste where it will cause pollution of state waters.		
Water Quality Act	04/10/92	ADM	Under Order	City of Bozeman Skaggs Alpha Beta Jewel Companies, Inc.	Gallatin	Unauthorized discharge.		

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed (\$)	Settlement Penalty (\$)
Water Quality Act	07/13/93	ADM	Under Order	Big Sky Water and Sewer District	Gallatin	Unauthorized discharge		
Water Quality Act	07/15/94	CIVIL	Under Order	Zortman Mining Co.	Phillips	Failure to comply with order.	25,300	25,300
Water Quality Act	08/23/94	CIVIL	Under Order	City of Billings	Yellowstone	Unauthorized discharge, failure to comply with permit.	25,800	25,800
Water Quality Act	08/20/96	ADM	Under Order	Montana Power Company	Granite	Failure to obtain permit.		
Water Quality Act	11/26/97	ADM	Under Order	Willow Creek Sewer District	Gallatin	Permit violation, reporting violations.		
Water Quality Act	02/12/98	ADM	Under Order	C. R. Kendall Canyon Resource Corporation	Fergus	Unauthorized discharge.		
Water Quality Act	04/08/98	ADM	Under Order	Hinsdale Water & Sewer District	Valley	Permit violation, reporting violations, failure to have certified operator		
Water Quality Act	06/29/98	ADM	Under Order	Gerhart Blain	Yellowstone	Unauthorized discharge.		
Water Quality Act	07/01/98	ADM	Under Order	Scarsella Brothers, Inc. Chris Noble	Lincoln	Placement of waste where it will cause pollution of state water, failure to obtain permit.		
Water Quality Act	11/20/98	ADM	Under Order	Golden Sunlight Mine	Jefferson	Unauthorized discharge	18,360	23,470
Water Quality Act	02/23/99	ADM	Under Order	TVX Mineral Hill	Park	Unauthorized discharge.		
Water Quality Act	02/24/99	ADM	Under Order	Luzenac America	Madison	Unauthorized discharge.		
Water Quality Act	05/17/99	ADM	Under Order	Ralph Chaney	Powder River	Permit violation, failure to report	5,000	2,500
Water Quality Act	09/24/99	ADM	Under Order	Paul Gies, Jr.	Fergus	Unauthorized discharge.		
Water Quality Act	03/01/00	ADM	Under Order	Agri-Systems, Inc.	Big Horn	MPDES permit violation	3,200	
Water Quality Act	03/28/97	ADM	Withdrawn	James Toomey	Lincoln	Failure to obtain a permit, placement of waste where it will cause pollution of state waters.		
Water Quality Act	07/27/98	ADM	Withdrawn	Scarsella Brothers, Inc.	Lincoln	Failure to obtain permit, placement of waste where it will cause pollution of state water.		
Water Quality Act	07/27/98	ADM	Withdrawn	Scarsella Brothers, Inc.	Lincoln	Failure to obtain permit, Placement of waste where it will cause pollution of state waters.		
Water Quality Act	08/06/98	ADM	Withdrawn	Melrose Water & Sewer District	Silver Bow	Failure to use a certified operator.		
Water Quality Act	12/24/98	ADM	Withdrawn	Agri-Systems, Inc.	Big Horn	Permit violation.		

## **Sanitation in Subdivisions Act, 76-4-101 MCA et seq.**

### **Subdivision Section**

#### **1. Program Description**

The Subdivision Section in the Water Protection Bureau reviews plans for proposed subdivisions to ensure adequate water supplies, sewage treatment, storm water drainage and solid waste disposal; makes nonsignificance determinations for proposed sewage systems pursuant to the Water Quality Act; and prepares environmental assessments.

#### **2. Activities and Efforts to Promote Compliance Assistance and Education**

The section provides technical assistance and training on the requirements of the Sanitation in Subdivisions Act and the nondegradation standards of the Water Quality Act to local health departments, county commissioners and to developers and their consultants. Most technical assistance is provided by phone or in the office. However, within budget constraints, the section has increased efforts to provide more formal training to county sanitarians and consultants. To address a specific non-compliance issue of building prior to subdivision approval, the subdivision application form was revised to clearly notify property owners of that prohibition and a letter was sent to all subdivision consultants and county health departments.

The section reviewed the plans and specifications for 2,608 subdivisions in FY 1999 and FY 2000, and made water quality nondegradation nonsignificance determinations for more than 10,000 sewage systems to ensure compliance with the Sanitation in Subdivisions Act and the Water Quality Act.

#### **3. Size and Description of The Regulated Community**

The more than 2,600 applicants during the reporting period represent the actively regulated community. Most subdivision applications are for minor subdivisions of five or fewer lots and are from owners of small parcels.

Because every subdivision is approved with conditions related to the type and location of water-supply and sewage-treatment facilities, each subdivision lot approved by the department remains subject to the requirements of the Sanitation in Subdivisions Act. Data are not available for all years since passage of the first law regulating subdivisions in Montana. However, available records indicate that more than 160,000 lots have probably been created since 1961. Although a significant proportion of these lots probably have not been built on, the total number of lots and individuals subject to regulation is undoubtedly very large.

#### **4. Number, Description, Method of Discovery, and Significance of Non-compliances**

The department mainly discovers non-compliances with the Sanitation in Subdivision Laws through citizen complaints or notifications of alleged violations by county health departments. (Local boards of health contracted to review minor subdivisions of five or fewer lots may also enforce the requirements of the Sanitation in Subdivisions Act.) The status of the 31 complaints received by the department during FY99-00 is shown in the following table:

Table 50. Status and number of complaints related to the Sanitation in Subdivisions Law managed by the Enforcement Division during FY99-FY00.

Status	Subdivisions
Active: under investigation by ENFD	6
Active: under investigation by program	4
Investigated and closed by ENFD	18
Investigated and closed by program	2
Referred to another agency	1
Enforcement action requested for resolution	0
Total	31

## 5. How Addressed

Because an internal legal interpretation, held until recently, stating monies collected for subdivision review fees could not be used to fund enforcement actions, the Subdivision Section was wary about providing compliance assistance and initiating enforcement actions. Instead, ENFD staff investigated alleged non-compliances and sent violation letters as appropriate. Consequently, the Subdivision Section did not request any enforcement actions, and no violations were prosecuted during the biennium.

## 6. Enforcement Activities

Table 51. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Sanitation in Subdivisions Act.

[illegible]

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** - Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn - Enforcement Request was withdrawn before case development began.**

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

**Table 52. Facts about the individual enforcement actions that were initiated during the biennium under the Sanitation in Subdivisions Act.**

<b>Statute</b>	<b>Enforcement Request Date</b>	<b>Action Type</b>	<b>Status of Action</b>	<b>Company / Individual</b>	<b>County</b>	<b>Description of Violation</b>	<b>Penalty Assessed (\$)</b>	<b>Settlement Penalty (\$)</b>
<b>Sanitation in Subdivision Act</b>	No enforcement action taken.							

## **E. ENVIRONMENTAL MANAGEMENT BUREAU**

### **Metal Mine Reclamation Act, 82-4-301, et, seq., MCA**

#### **1. Program Description**

The Hard Rock Program (HRP) of the Environmental Management Bureau (EMB) administers the Montana Metal Mine Reclamation Act (MMRA), the Montana Environmental Policy Act (MEPA), administrative rules on hard rock mining, and reclamation plan evaluation and activity compliance. Functions of the HRP are: (1) regulation of hard rock mining activities; (2) regulation of reclamation activities at hard rock mining sites; (3) reclamation of abandoned mining sites with forfeited reclamation bonds; (4) implementation of environmental analysis provisions of MEPA and the hard rock mining and reclamation statutes; and (5) administration of the Small Miners Exclusion and Exploration programs. Activities which implement the HRP's functional responsibilities include permit evaluation and maintenance; inspection; enforcement assistance; resource management for surface and groundwater, biological, cultural, and other resources; information and data management; and training.

#### **2. Activities and Efforts Taking Place to Promote Compliance Assistance and Education**

Plan of Study: Identification and analysis of the baseline or affected environment is the first step in preparing an application for an Operating Permit under the Metal Mine Reclamation Act (MMRA). A Plan of Study to produce the baseline report is not required by law but provides an opportunity for the program to work with the mining company to "do it right the first time." The HRP performs a courtesy review of the plan to provide guidance on completeness and scope. Companies will communicate with staff during collection of baseline data to make sure they are complying with the Plan of Study.

Application for an Operating Permit: The MMRA defines a review period for assisting companies in producing an application that: is accurate, understandable, and complete; has sufficient detail for bonding; and that will provide adequate information to support either an environmental assessment or environmental impact statement. During this time staff work with the companies to produce a mine plan that should comply with the mining, air and water laws. This effort includes coordination with other agencies to assist in identifying the diverse resource areas that may be affected.

Montana Environmental Policy Act: Two court decisions have interpreted MEPA as having more substantive authority in mitigating significant impacts in an interdisciplinary manner. The HRP staff work with the applicant to identify appropriate, cost effective mitigation for incorporation into the mining proposal. The control of fugitive road dust is an example. Measures such as sprinkling, dust suppressants, or rock armoring may be committed to or stipulated in the permit.

Compliance assistance continues once a permit is issued. HRP staff perform from one to four regularly scheduled inspections of every permit area each season to ensure that the provisions in the permit are adhered to. Lead staff, hydrologists, soil specialists and engineers know the projects and assist the mining companies in recognizing potential violations in the field and correcting them before a non-compliance occurs. An example is trend analysis on water quality. An upward trend in a particular parameter must be detected early so that its source can be identified and eliminated before the applicable standard is reached.

Monthly bond oversight meetings ensure that the staff consider changing conditions and circumstances at each operating permit area at least once a year. Comprehensive bond reviews are completed at least once every 5 years. HRP staff review various reporting and monitoring information from permittees including water quality samples and analysis and final facility designs. This information may come in the form of an Annual Report or required monitoring program submittal.

Another example of compliance assistance in the field is monitoring of soil stockpile volumes through the Annual Report. If volumes appear to be falling behind the benchmark identified in the permit, the company can be alerted to a potential shortfall and work toward making up the shortage. If compliance is achieved no violation would occur.

**Enforcement Assistance:** The Notice of Violation copied to the Enforcement Division (ENFD) assists in coordination between the two divisions. It opens up communication with the mining companies in order to assist in their compliance as in the soil example above.

The EMB and the Industrial and Energy Minerals Bureau are currently developing a database which will be used throughout the department to ensure that all the information the bureaus have is accessible to the ENFD. This should facilitate coordination between the bureaus and the ENFD and quicker response times to actions passed on to the ENFD. Implementation of this system within the two bureaus is scheduled for January 2001.

**Education Assistance:** In a joint effort with the Forest Service, Bureau of Land Management, Montana Tech, consultants, industry sponsors, Haskell Indian Nations Univ., and Salish-Kootenai College, the EMB hosts the Mine Design, Operations & Closure Conference every year. This conference provides a forum in which industry and regulatory agencies can keep abreast of state-of-the-art reclamation practices. The conference promotes compliance by introducing new technologies and providing the opportunity for interaction with the regulated community and interested groups.

Several other symposia, conferences and workshops are attended by HRP staff including the Northwest Mining Association Convention, the High Altitude Revegetation Workshop, the Billings Land Reclamation Symposium and various geochemistry and geotechnical workshops.

### **3. Size and Description of the Regulated Community and . . . Compliance/Non-compliance**

Currently the Hard Rock Program has 80 Permits covering 73 mines. Twenty-one are precious metal mines including placer gold mines; four are actively mining. There are six base metal mines; two are actively mining. There are 20 rock quarry (building stone, aggregate, etc.) operations, including eight limestone operations with four actively mining. There are five talc mines, of which two are actively mining. There are 150 current exploration licenses and 568 Small Miner Exclusions.

Of the 798 permits, licenses and exclusions administered by the EMB, 780 are in compliance, leaving approximately 2% out of compliance (see no. 4).

### **4. Number, Description, Method of Discovery and Significance of Non-compliance**

Table 54 shows violations from July 1998 – June 2000; 34 were resolved and 13 are pending in the bureau, while 6 others were sent to ENFD. Aside from those sent to the Enforcement Division, 4 could be judged ‘significant’. These do not pose a threat to human health.

Not included in the table are violations regarding renewals and reports that must be filed with the bureau on an annual basis. From July 1998 – June 2000, 164 late renewal letters were sent to Small Miner Exclusion (SME) holders. Ninety-four of these are resolved. Since it is not mandatory to renew a SME if no work is done, these are not usually considered violations unless reclamation is necessary. Field inspections on these sites are conducted as time permits. In the same time period, 29 late renewal letters were sent to Exploration license holders, with 24 resolved. The other five still have a bond with the state and should have a current exploration license. Follow-up with these companies is ongoing. Twenty-eight late renewal notices were sent to Operating Permit holders during the July 1998 – June 2000 time period, all of which have been resolved.

Table 53. Status and number of complaints related to the Metal Mine Reclamation Act managed by the Enforcement Division during FY99-FY00.

Status	Metal Mines
Active: under investigation by ENFD	0
Active: under investigation by program	0
Investigated and closed by ENFD	7
Investigated and closed by program	8
Referred to another agency	0
Enforcement action requested for resolution	1
Total	16

## 5. Response to Non-compliances

Response to Non-compliances is listed in Table 54. Formal enforcement actions and penalties are listed in Tables 55 and 56.

## 6. Trends

Since the last legislature, mining and mining related activity in Montana has decreased due to several factors including metals prices and I-137. In general, the majority of problems are associated with reclamation, bonding and long-term water treatment rather than issues associated with active mining.

Table 54. List of companies and violations and how the violations were resolved.

Date of Letter	Company Name	Permit #	Violation Description	Date Observed	Date of Resolution	Abatement Description
	Luzenac America	00109	Nitrate pollution of ground water		Ongoing	Submit compliance plan, pumping nad land applying
	Pegasus Gold	00160	Diesel fuel release		Ongoing	Remediation ongoing
	TVX Mineral Hill	00100	Nitrate pollution of ground water		ongoing	Remediation ongoing
	David Gull		Silt in stream	12/16/1998	3/22/1999	Penalty paid
7/8/98	Ken White		Mining without SMES		9/98	Operator filed SMES
7/24/1998	Washington Gulch Placer	00146	Order to Reclaim sent, after property was abandoned	9/97	9/15/98	Order temporarily suspended
8/3/1998	Hanover Gold	00531	Drilled holes not authorized in plan	7/23/98	8/3/98	Reclaimed, company warned
8/19/1998	CR Kendall	00122	Order to Reclaim		ongoing	Still under negotiation
8/28/1998	Don Peterson	Ex458	SMES revocation/bond forfeiture			Site reclaimed by operator
9/18/1998	Kennecott		Failure of reclamation @ Snowshoe Project	1994, 1997	12/10/99	Released from liability due to surrounding disturbance and natural erosion patterns
9/29/1998	Vernon Smith		Mining in Limekiln Gulch without SMES			Reclassified as grandfathered site
10/6/1998	Louis & Gloria Weaver	54-078	NOV	9/98	10/16/1998	Disturbance reclaimed
10/9/1998	Golden Sunlight	65	NOV CN spill, not reported			To ENFD
10/15/1998	Helena Sand & Gravel, Maronick	19, 126	Deadline to turn in maps 11/1/1998, requested first in 9/22/97			Operator complied
10/26/1998	Mike Deans		Disposing of waste tires on mine site			After extensions, operator complied
10/30/1998	Farmers Plant Aid	18-023	Extraction of peat without a current SMES			Operator renewed, now under Open Cut Program
10/30/1998	Terry Eubanks		Deadline – reclaim in 30 days			Operator complied
11/17/1998	Black Hawk	Ex308	Adit closure and reclamation overdue		11/99	Reclamation completed
11/20/1998	Spokane Minerals	Ex536	Weeds on permit area			Operator started weed control
12/8/1998	Stearns	Ex445	Browns Park project, reclamation overdue and weeds on site		ongoing	Site visit pending
12/9/1998	Barretts	Ex211	Reclamation overdue			Interim reclamation performed
3/16/1999	American Gem		Insufficient freeboard			Ponds pumped down
3/22/1999	TVX	00100	Arsenic standards exceeded		Ongoing	2/2000 report by mine consultant stating cause as natural cyclical trend. This issue to be addressed in upcoming EIS.
4/1/1999	High Country Minerals	25-125	Complete reclamation ordered			5/10/999 SMES revocation/bond forfeiture. Reclamation complete
4/14/1999	David Ray		Operating w/o SMES		4/99	SMES filed
6/8/1999	Riederer – Valds	Ex573	Order to reclaim by end of 1999 season, overdue reclamation			Dirt work completed summer 1999, revegetation pending

Date of Letter	Company Name	Permit #	Violation Description	Date Observed	Date of Resolution	Abatement Description
6/25/1999	Industrial Consult/Marketing		Radersberg quarry >5 acres, must reclaim			To ENFD
7/7/1999	Robert Harper		Lowland Creek, mining w/o SMES		7/99	SMES filed
7/19/1999	Golden Sunlight	00065	CN spill		Ongoing	Sampled, monitored, contained within permit area
9/15/1999	Phelps Dodge	Ex437	Need to reclaim Argenta Project		Ongoing	Site visit pending
9/16/1999	Cliff Sabo		SMES app w/in 30 days or legal action will occur		11/99	SMES filed
10/4/1999	Baltrush Construction	12-002	SME site over 5 acres	11/98		Operator reclaimed within 5 acre limit
10/4/1999	Sweetwater Garnet	00158	Reclamation overdue		8/2000	Property transferred to new operator
10/27/1999	Dillon Vermiculite	18-114	Non			To ENFD
10/27/1999	Channel & Basin	18-114	Non			To ENFD
10/27/1999	Industrial Consulting & Marketing Inc.	43-100	Non, follows 6/25/1999 letter			To ENFD
10/27/1999	AL Comer	00039	Reclamation overdue		6/2000	Operator reclaimed
11/26/1999	Stansbury	00094	Deadline for bond submittal			To ENFD
12/7/1999	Robert Burcar		Reclamation overdue			Bond forfeited, reclaimed
12/30/1999	Pan American Silver	123	Off site water quality impacts			Passed to water quality bureau
1/18/200	Cable Mountain Mine	00134	Reclamation overdue		ongoing	Operator is reclaiming
1/18/200	Bob Lewis, Robert Lewis	00087	Cleanup of Sauerkraut Creek		ongoing	Site visit pending
2/7/2000	Meridian Aggregates	00045	Reclamation overdue, deadline set for 10/15/2000		ongoing	
3/23/2000	ASARCO	00093	Bond submittal needed			Bond submitted
3/30/2000	Donald Moats		Violation	6/99	11/99	Chemicals removed from site
5/4/2000	Dean Bradley/Ed Heine Washington Gulch	00146	Bond due		Ongoing	Notice of forfeiture sent to surety
5/25/2000	NovaGold	Ex362	Weed control needed		Ongoing	Site visit pending

## 7. Enforcement Activities

Table 55. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Metal Mine Reclamation Act.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Metal Mine Reclamation Act	14	21	14	7	0	0	0	0	0	0	9	0	5
Total	14	21	14	7	0	0	0	0	0	0	9	0	5

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 56. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Mine Reclamation Act.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
MM	05/07/97	ADM	Closed	Seahawk, Inc.	Broadwater	Failure to reclaim		
MM	10/22/97	ADM	Closed	Earl E. Woodring	Flathead	Failure to reclaim	\$ 500	
MM	10/28/97	ADM	Closed	New Butte Mining, Inc.	Silverbow	Failure to comply with operating permit	\$ 500	
MM	09/11/98	ADM	Closed	David Gull	Mineral	Failure to comply with operating permit; unauthorized discharge	\$ 100	
MM	05/19/99	ADM	Closed	American Gem Corporation	Granite	Failure to comply with operating permit	\$ 850	
MM	01/01/96	ADM	Under Order	Base Metals & Energy, Inc.	Beaverhead	Failure to reclaim		
MM	11/20/98	ADM	Under Order	Golden Sunlight Mine	Jefferson	Failure to comply with operating permit; unauthorized discharge	\$ 3,000	
MM	07/09/99	ADM	Under Order	William Rollow	Granite	Failure to reclaim		
MM	11/18/99	ADM	Under Order	New Butte Mining, Inc.	Silverbow	Failure to reclaim		
MM	12/02/99	ADM	Under Order	Estate of William Hand	Beaverhead	Failure to reclaim	\$12,000	\$ 1,200
MM	01/25/00	ADM	Under Order	Industrial Consulting and Marketing, Inc.	Broadwater	Failure to obtain operating permit	\$ 2,875	
MM	01/28/00	ADM	Under Order	Stansbury Holdings Corporation	Ravalli	Failure to post bond		
MM	01/28/00	ADM	Under Order	Stansbury Holdings Corporation	Beaverhead	Failure to post bond	\$42,500	
MM	02/10/00	ADM	Under Order	Wagner Nursery	Jefferson	Failure to obtain Small Miners Exclusion Statement	\$ 425	

## **Montana Major Facility Siting Laws, 75-20-101**

### **1. Program Description**

The Major Facility Siting Program includes: (1) regulation of the siting, construction, and operation of large energy facilities such as generating plants, hydroelectric dams, electric transmission lines and pipelines; (2) performing as lead state agency on the relicensing of federal facilities; and (3) production and oversight of environmental documentation in support of permitting efforts under the Major Facility Siting Act and MEPA.

### **2. Describe the Activities Taking Place to Promote Compliance Assistance and Education**

- a. DEQ is consulting with Continental Energy on its planned application for a new generating plant and associated gas pipeline between Cut Bank and the plant area near Silverbow. We are participating in public meetings with Continental Energy to identify public concerns with the project.
- b. Washington Water Power (WWP) obtained a new license from the Federal Energy Regulatory Commission (FERC) to continue to operate their hydropower facilities at Noxon Rapids and Cabinet Gorge dams. For hydroelectric facilities which fall under the Major Facility Siting Act, DEQ is required to file a state recommendation to the commission.

Department staff serve on a management committee which oversees implementation of a comprehensive settlement agreement and parallel license terms based on adaptive management principles that require mitigation and enhancement measures to be implemented. Other staff members serve on technical advisory committees advising the management committee on specific matters related to either terrestrial or aquatic resource protection, mitigation and enhancement.

- c. The Major Facility Siting Act (MFSA) Certificate of Public Need and Environmental Compatibility for Colstrip Units 3 and 4 requires that Montana Power Company submit annual monitoring reports regarding leakage from the "closed loop" ash disposal system. Staff members review results of the monitoring reports and MPC's proposed cleanup measures for leaks and spills, and suggest alternative and additional cleanup and prevention measures. Over the years this has involved replacement of two aging pipeline systems used to move slurry from the power plants to the ash disposal facility; decommissioning of leaking brine ponds; rehabilitation of failing brine leakage interception systems; and addition of alarm and backup pump and interception systems to collect leakage from ash processing and disposal ponds. We have facilitated electronic submission of monitoring data rather than voluminous paper reports.
- d. Express Pipeline was certified by the Board of Environmental Review in 1996. The greater than 300-mile project in Montana was constructed that fall. Final cleanups took place in 1997 with a few problematic areas of inadequate revegetation being readdressed during the spring and fall of 1998. DEQ participated in orientation of contractors prior to the beginning of construction to inform them of the requirements of the certificate. We are now monitoring the project to see that areas disturbed during construction are adequately reclaimed.

- e. We reviewed a draft amendment application for a new connection between the Express Pipeline and Conoco's Glacier Pipeline in an effort to streamline the application process. The formal application for an amendment to the Express certificate for a connection between the Express Pipeline and Conoco's Glacier Pipeline has been received by the bureau. The proposed connection would involve four large breakout tanks (48' high x 134' diameter) located north of Judith Gap.

### 3. Regulated Community

The regulated community consists of owners of large facilities covered by MFSA. The following table indicates the facilities operating under certificates, or in the case of federally- owned projects, those which have been found to be in substantive compliance with MFSA.

Table 57. Facilities operating under a MFSA certificate (or authorization for federally-owned facilities)

Project	Owner	# of new violations in last biennium	Operating in compliance with the certificate?
Colstrip units 3 and 4	MPC, PP&L and others	6	no
Express Pipeline	Express Pipeline	1	no
Laurel to Bridger B line	MPC	0	no
Laurel to Bridger A line	MPC	N/A	yes
Central Montana transmission line	MPC	N/A	yes
Conrad to Shelby transmission line	WAPA	N/A	yes
Great Falls to Shelby transmission line	WAPA	N/A	yes
Fort Peck to Wolf Point transmission line	WAPA	N/A	yes
Fort Peck to Havre transmission line	WAPA	N/A	yes
Colstrip to Broadview A and B transmission lines	MPC	N/A	yes
Broadview to Townsend A and B transmission lines	MPC	N/A	yes
Townsend to Garrison transmission line	BPA	N/A	yes
Garrison to Taft transmission line	BPA	N/A	yes
Clyde Park to Dillon transmission projects	MPC	N/A	yes
Missoula to Hamilton transmission line	MPC	N/A	yes

### 4. Number, Description, Method of Discovery, and Significance of Non-compliance, Including Those that are Pending

See Table 59 for the number of non-compliances. Non-compliances are found through onsite inspections, review of required monitoring reports, response to spills reported on the spill hotline or through citizen reports.

*Description of violation:*

Colstrip Units 3 and 4. The certificate requires that the facilities be operated as a closed-loop system so that there would be no leakage from the wet process ash disposal system. Groundwater monitoring or spills reported to DEQ indicated where the facilities are not operated as a closed-loop system. The environment (groundwater) is being adversely affected by the release of water with elevated Total Dissolved Solids.

Express Pipeline. Express Pipeline may be violating noise standards set by DEQ at the Edgar Pump Station. Express Pipeline is in the process of responding to a notice of violation and DEQ has an acoustic engineer examining the issue. Although the level of sound produced by the pumps is not much above the standard set, the pumps are operating below current installed capacity and Express Pipeline has plans to install additional pumps in the future.

Express Pipeline also is not in complete compliance with revegetation standards that require 30% ground cover of perennial non-weedy species within one growing season after completion of construction. In many areas (about 65% of the rangeland and Conservation Reserve Program land crossed) they have attained more than 90% ground cover which is not required until after year five, but there are a few small areas where compliance has not been reached. We are now in year four following reseeding which occurred at the end of construction. Express Pipeline is being conscientious in addressing this concern.

Laurel to Bridger transmission line. A relatively small area at the southern end of the line has not attained the required 90% ground cover of perennial species. Cheat grass has taken over the small disturbed areas where crane landings had been built. We requested that the area be reseeded and MPC obliged. However, the landowner's cattle are heavily grazing the pasture. In the past, sheep and goats grazed this area in an effort to control a serious existing leafy spurge problem. Between the highly constrained site conditions (clayey soils on a south aspect) and livestock use, the reseeding efforts have been unsuccessful.

## 5. Enforcement Activities

Table 58. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the Montana Major Facility Siting Law.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Major Facility Siting Act	1	0	0	1	0	0	0	0	0	0	0	0	1
Total	1	0	0	1	0	0	0	0	0	0	0	0	1

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 59. Facts about the individual enforcement actions that were initiated during the biennium under the Montana Major Facility Siting Laws.

Statute	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
MSFL	02/10/00	ADM	Closed	Montana Power Company Pennsylvania Power & Light, Inc.	Rosebud	Violation of Certificate of Environmental Compatibility	\$11,400	\$ 3,800

## ***II. REMEDIATION DIVISION***

### **A. TECHNICAL SERVICES BUREAU**

**Montana Underground Storage Tank Act, 75-11-501**

**Montana Underground Storage Tank Installer, Licensing and Permitting Act, 75-11-201**

#### **1. Program Description**

The Technical Services Bureau (TSB) is comprised of three sections. The Petroleum Fund Services Section administers the Petroleum Tank Release Compensation Fund. The Information Services Section manages the electronic information systems for the Remediation Division. These two sections within TSB have no enforcement responsibilities.

The Environmental Services Section (ESS) of TSB is responsible for managing the leak prevention program for underground storage of petroleum and other hazardous substances. Underground storage tank (UST) owners and operators are required to obtain permits from DEQ for any work on their UST system. DEQ licenses UST contractors and inspectors and verifies that permitted work is conducted according to regulations. Until December 31, 1999, ESS conducted inspections of UST facilities to determine if the USTs were in compliance with UST management and operation regulations. The 1999 Legislature placed these inspections in the hands of private inspectors, which ESS now licenses and oversees. No private sector compliance inspections were conducted before June 30, 2000.

Designing and implementing this compliance inspection program commanded much of the section's resources for the past year and a half. Compounding this workload, all USTs in the state were to have met certain design criteria by December 22, 1998. Temporary closure of non-compliant USTs was allowed until December 22, 1999. The program has been extremely busy the last two years assisting owners with understanding the upgrade requirements and obtaining permits, as well as doing compliance reviews for eligibility to cleanup funds, and answering UST management and operation questions.

#### **2. Activities and Efforts to Promote Compliance Assistance and Education**

TSB focuses its resources on compliance assistance, information dissemination, and education. Formal enforcement is used as a last resort and only when the violation is considered significant.

Much effort was expended during the second half of 1998 reminding UST owners that their USTs had to be upgraded or placed in temporary closure by 12/22/98. Several mailings were sent to those owners who had not yet complied; the final one in December 1998. Two reminders regarding tanks in temporary closure were sent in 1999.

Two newsletters were prepared for circulation to UST owners and operators; one during the summer of 1999 and one during the summer of 2000. These newsletters keep interested parties abreast of deadlines, changes in regulations, new technology, and technical problems, which are evidenced repeatedly. Additional assistance was provided to UST owners through presentations at numerous conferences and meetings. The Bureau also continues to distribute owner/operator manuals and information brochures to all tank owners or operators as requested.

The 1999 legislature mandated that UST owners hire private compliance inspectors to conduct one compliance inspection of their facility every three years. The department made several mailings soliciting owner comments on proposed rules developed for this program. The TSB solicited tank owners for participation on a task force established to help develop this inspection program. A task force of 15 people was created, which is made up of tank owners/operators, county & state government officials, environmental consultants and the Petroleum Marketers' Association. This task force met twice in 1999 and was instrumental in getting the inspection program up and running.

The TSB trained and tested prospective UST compliance inspectors during the spring of 2000. From this effort, 24 people were licensed (23 private inspectors and one local government inspector).

Three UST contractor refresher courses were conducted by TSB during this time period. TSB also organized two corrosion courses to provide training for contractors desiring to be corrosion testers.

### **3. Size and Description of Regulated Community**

The regulated community for the Underground Storage Tank Leak Prevention Program includes owners and operators of underground storage tank systems. As of July 1, 1998, the number of UST facilities regulated stood at about 2,149. As of June 30, 2000, this number had been reduced to about 1,556 facilities, most of which have multiple tank systems. Most closures can be attributed to EPA and Montana requirements that USTs must be upgraded to meet certain design standards or closed prior to December 22, 1998 (temporarily closed tanks were to be permanently closed by December 22, 1999). In many cases these facilities remained open, but discontinued the use of their USTs.

As of June 30, 2000, the number of active federally-regulated UST systems was 3,633. A total of 3,478 of these systems are equipped to meet the 1998 design standards and leak detection requirements. The state also regulates heating oil tanks (except small residential tanks) and underground piping attached to aboveground storage tanks (except for farm and residential tanks under 1,100 gallon in capacity), neither of which are federally regulated. Therefore, the state-regulated active UST systems actually number 4,195.

Approximately 96% of the UST systems were equipped to meet release detection requirements as of June 30, 2000 and that approximately 96% of the UST systems had been upgraded to meet the 1998 design standards. This compares with 67% and 53%, respectively, at the start of Fiscal Year 1999. Enforcement efforts are being directed at the remaining non-compliant systems.

Approximately 864 permits were issued during FY99 to install, modify, or close UST systems; and 396 during FY00. This difference can also be attributed to the passage of the 1998 deadline. TSB conducted 433 inspections during Fiscal Year 1999 and 107 in Fiscal Year 2000. This difference can be attributed to the following: 1) TSB's responsibility to inspect ended January 1, 2000; and, 2) ESS staff's preoccupation with designing and implementing the privatized compliance inspection program.

ESS licenses UST installers, removers and corrosion protection experts. Enforcement actions can be taken in the event of unprofessional conduct by licensed installers. Two licenses were revoked in this two-year period.

#### **4. Number, Description, Method of Discovery and Significance of Non-compliance**

Violations are primarily identified during inspections, upgrade activities, complaints and petroleum release assessments. During Fiscal Years 1999-2000, TSB conducted 533 inspections. Routine follow-up to an inspection includes a letter to UST owners explaining the violation(s) and requiring correction within a specified period of time. Failure to respond could jeopardize eligibility for cleanup funds and lead to an enforcement action. DEQ adopted administrative penalties in June 1998 to help speed up enforcement and encourage compliance. Significance criteria, to provide guidance on the issuance of Violation Notices and enforcement actions, is currently being rewritten.

Table 60. Status and number of complaints related to the Underground Storage Tank Act managed by the Enforcement Division during FY99-FY00. This table does not include the UST 24-hour leak reports managed by the Technical Services Bureau.

Status	UST
Active: under investigation by ENFD	1
Active: under investigation by program	1
Investigated and closed by ENFD	6
Investigated and closed by program	11
Referred to another agency	3
Enforcement action requested for resolution	4
Total	26

#### **5. Trends**

Two milestones passed since the last Legislative session, which preclude useful trend delineation. The passing of the December 22, 1998 upgrade deadline (with its December 22, 1999 deadline for permanent closure of temporarily closed tanks), and the institution of the private compliance inspection program skew any generalities which might otherwise be drawn. Yet both of these milestones mark new beginnings from which useful data can now be kept and interpreted.

Enforcement cases will be more numerous in FY2001, as we try to close the UST systems, which were not upgraded. Enforcement cases should reduce from that level in FY2002. We cannot predict how many violations to expect from our licensed compliance inspectors. Recently, upgraded facilities should be nearly in compliance, yet the number of inspections will significantly increase.

## 6. Enforcement Activities

Table 61. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the statutes administered by the Technical Services Bureau.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Underground Storage Tank Act	24	0	17	7	3	0	0	0	3	0	10	1	12
Under ground Storage Tank Installer and Inspector Licensing and Permitting Act	2	0	2	0	0	0	0	0	0	0	1	0	1
<b>Total</b>	<b>26</b>	<b>0</b>	<b>19</b>	<b>7</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>11</b>	<b>1</b>	<b>13</b>

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 62. Facts about the individual enforcement actions that were initiated during the biennium under the statutes administered by the Technical Services Bureau.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
UST	12/22/98	ADM	Closed	Hays-Lodgepole School District #50	Blaine	Failure to upgrade or closed substandard USTs		
UST	01/29/99	ADM	Closed	Chester Bullock dba/ Silver Saddle Bar and Café	Jefferson	Failure to upgrade or close substandard USTs.		
UST	02/24/99	ADM	Closed	Larry and Lilly Brower dba Marion Store	Flathead	Failure to close an out-of-use UST	\$ 900	
UST	02/24/99	ADM	Closed	Mike Kakalecik dba 9 <sup>th</sup> Street Conoco	Cascade	Failure to upgrade or close substandard USTs, failure to provide records.	\$ 600	
UST	02/24/99	ADM	Closed	Terry Claver dba Glasco Lumber	Judith Basin	Failure to close an out-of-use UST, failure to obtain a closure permit.		
UST	02/24/99	ADM	Closed	Universal Tire and Alignment	Fallon	Failure to upgrade or close substandard USTs, failure to provide records	\$ 350	
UST	03/04/99	ADM	Closed	Patrick O'Neill dba Silver Forest Inn	Gallatin	Failure to upgrade or close substandard USTs		
UST	06/28/99	ADM	Closed	Paper Dollar Bar	Toole	Failure to conduct release detection	\$ 300	
UST	06/28/99	ADM	Closed	Clayton Hildreth dba Country Corners	Beaverhead	Failure to provide records, failure to pay registration fes	\$ 150	
UST	08/12/99	ADM	Closed	First Bank of Lincoln	Lewis & Clark	Failure to close an out-of-use UST, failure to pay registration fees	\$ 275	
UST	08/25/99	ADM	Closed	Deer Lodge Petroleum	Powell	Failure to obtain closure permit, failure to properly close an UST, failure to pay registration fees	\$ 500	
UST	03/15/99		Development	Dennis Jones	Park	Failure to close an out-of-use UST, failure to adhere to closure permit requirements	\$1,500	
UST	02/23/00		Development	Avon General Merchandise Co.	Powell	Failure to permanently close an UST, failure to pay registration fees		

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
UST	03/13/97	CIVIL	Under Order	Lester Beil	Valley	Failure to close out-of-use USTs, failure to pay fees	\$3,371	
UST	12/18/98	ADM	Under Order	Paul Raddatz	Ravalli	Failure to close an out-of-use UST, failure to conduct release detection, failure to notify	\$1,100	
UST	06/28/99	ADM	Under Order	Tom Winsor	Lewis & Clark	Failure to close an out-of-use UST, failure to pay registration fees, failure to notify	\$ 900	
UST	06/28/99	ADM	Under Order	Robert McCurdy dba Park Super Service	Powder River	Failure to close an out-of-use UST	\$ 600	
UST	06/28/99	ADM	Under Order	David Silvus dba Silvus Conoco	Carrter	Failure to close an out-of-use UST	\$ 900	
UST	11/17/99	ADM	Under Order	Yellowstone Conoco	Cascade	Failure to conduct release detection, failure to provide records	\$ 500	
UST	11/17/99	ADM	Under Order	Big Sky Truck Stop	Beaverhead	Failure to provide records	\$ 500	
UST	02/03/00	ADM	Under Order	Dave Johnson	Powell	Failure to close an out-of-use UST, failure to pay registration fees	\$ 300	
UST	06/28/99	ADM	Withdrawn	Four Way Fuel	Chouteau	Failure to close UST, failure to meet temporary closure requirements		
UST Installer	02/23/00		Development	Curtis and Curtis Construction	Flathead	Failure to obtain a closure permit		
UST Installer	01/15/99	ADM	Closed	Roy Ereaux	Lewis & Clark	Unprofessional conduct		
UST Installer	11/20/98	ADM	Under Order	James Olson	Lewis & Clark	Unprofessional conduct		
UST Installer	11/20/98	CIVIL	Litigation	James Olson	Lewis & Clark	Failure to comply with permit conditions and UST rules		

<sup>1</sup> UST = Montana Underground Storage Tank Act

UST Installer = Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act

## **B. HAZARDOUS WASTE SITE CLEANUP BUREAU**

### **Montana Underground Storage Tank Act, 75-11-501**

#### **1. Program Description**

The Petroleum Release Section (PRS) is comprised of the Leaking Underground Storage Tank (LUST) Trust Fund Program and the Petroleum Tank Release Cleanup Fund (PTRCF) Program. Technical staff implement corrective action required of the Montana Underground Storage Tank Act and ARM Title 17, Chapter 56, Sub-Chapter 6. They oversee, require, and sometimes perform the investigation and cleanup of sites contaminated by releases of regulated substances from underground storage tanks.

#### **2. Activities and Efforts to Promote Compliance Assistance and Education**

By the time a LUST has been identified, some level of pollution/contamination to soil and/or groundwater has already occurred. The Department focuses its efforts at obtaining compliance by identifying the environmental harm, and compelling corrective action to mitigate the risks to public health, safety and the environment.

Staff first attempts to gain responsible parties' voluntary compliance with the corrective action requirements specified in state law. The program works closely with owners of leaking USTs to determine if they can qualify for partial remediation cost reimbursements through the PTRCF. If the tank owner is/was in compliance with the UST program laws and rules when the release was discovered, the Petroleum Tank Release Compensation Board (PTRCB) is authorized to reimburse a portion of the eligible leak investigation, remediation and third-party damage costs up to \$1 million per release. The first \$35,000 in costs are split with the tank owner. In general, the PRS has not needed to take strong enforcement measures to achieve compliance with the corrective action requirements, due to the availability of the PTRCF and the rules for access to the fund. State law requires UST sites to remain in compliance with cleanup requirements in order to remain eligible for funding from the PTRCF.

Compliance assistance efforts include site visits and meetings with responsible parties and their consultants, which may include individuals from the PTRCB staff, local health officials and fire officials. The PRS project managers keep the responsible parties informed as to their continuing obligations as work through the investigation and cleanup progresses.

#### **3. Size and Description of Regulated Community**

The regulated community for UST Corrective Action includes any person who owns or operates an underground storage tank system, and who has been identified as having a suspected or confirmed release of a petroleum product or hazardous substance. The universe of UST owners and operators consists of federal, state and local governments, schools, hospitals, railroads, service stations, utilities, convenience stores, farms, and other industrial and commercial enterprises. A total of 3,817 releases have been identified from the inception of the program in 1988 through June 30, 2000.

The regulated community can be sorted into various categories based on their compliance and ability to investigate and clean up petroleum releases:

- a. known owners/operators in compliance with requirements;
- b. known owners/operators financially unable to afford to have their release investigated and cleaned up. This group includes entities who cannot even afford the Petroleum Tank Release Cleanup Fund (PTRCF) co-payment or one-half of the first \$35,000 in costs; and,
- c. known owners/operators unwilling to conduct the required investigation and cleanup; unknown source(s) of releases.

#### 4. **Number, Description, Method of Discovery and Significance of Non-compliance**

Once a release is reported to the program, its status is tracked on the program's database. The Montana UST Administrative Rules specify time periods and required actions for the investigation and corrective action phases of an UST release. If these time periods are exceeded, or if specific investigation or cleanup actions are not taken as required by DEQ, the violation becomes apparent on the database and to the project manager.

In addition to informal conversations and assistance visits, the PRS may issue up to three letters notifying responsible parties of incomplete work or non-compliance prior to initiating formal enforcement actions. In FY99, PRS has issued three 'second-request' letters and five 'third-request' letters notifying responsible parties that they missed a deadline and encouraging them to comply with legal requirements. A total of 33 'second-request' letters and 13 'third-request' letters have been issued in FY00. Continued non-compliance typically results in issuance of a notice of violation (NOV). DEQ issued four NOVs in FY 99 and two in FY00.

Table 63. Status and number of complaints managed during FY99-FY00 by the Enforcement Division related to releases of hydrocarbons that may be subject to the Underground Storage Tank Act.

Status	Hydrocarbon Releases
Active: under investigation by ENFD	2
Active: under investigation by program	11
Investigated and closed by ENFD	9
Investigated and closed by program	15
Referred to another agency	2
Enforcement action requested for resolution	0
Total	39

#### 5. **Response to Non-compliances**

The program uses a number of informal "enforcement tools" to encourage UST owners and operators to comply with corrective action requirements. These informal enforcement tools include warning letters, personal meetings, informal notices of violation, and the option of using the LUST Trust designation in cases of recalcitrance.

In most instances, the program first utilizes an escalating enforcement strategy designed to use the least resource-intensive enforcement activities. Initial efforts focus on informal enforcement actions, such as warning letters, informal notices of violation, requests for additional information or corrective action plan submittal, staff field visits or follow-up telephone calls in order to achieve voluntary compliance. The PRS case managers initiate these efforts. Cases are referred to the Enforcement Division for more resource-intensive actions, such as formal Notices of Violation and Order, judicial actions, etc. only when a lower level of enforcement action fails to achieve the desired response.

The type of enforcement response selected depends on the seriousness of the violation and the potential threat it poses to human health and the environment. Also considered is the current operational status of the source of the release (operational vs. non-operational), the owner's cooperation and financial ability to conduct the required release investigation and corrective action.

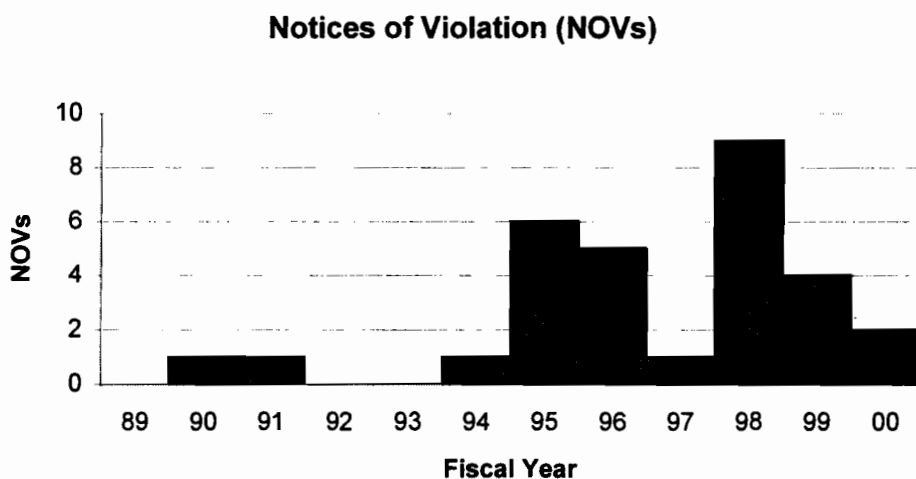
#### *LUST Trust Program*

The PRS utilizes the LUST Trust Program in lieu of or in addition to formal enforcement activities to conduct investigations and cleanup activities using DEQ staff or its contractors.

In the event (1) a release that cannot be linked to a specific tank source; (2) an identified UST owner/operator cannot afford cleanup; or, (3) an identified UST owner/operator refuses to conduct cleanup, the PRS may take unilateral state investigation and remediation action utilizing LUST Trust funds. These actions are funded 90% by a federal grant, which is matched by 10% in state monies. Costs incurred by DEQ for these actions are recoverable from the responsible parties. The agency utilizes these provisions to encourage responsible parties to conduct their own investigations and cleanups. Legal enforcement against insolvent or bankrupted responsible parties is not practical, as the agency may exert considerable legal resources to pursue parties with no ability to pay for cleanup costs.

## 6. Trends

Table 64. DEQ has issued a total of 30 notices of violation for corrective action, provisions of the Underground Storage Tank Act between 1989 and 2000.



These notices are categorized into three major violation types:

- a. failure to conduct initial response and abatement measures, 17.56.602 ARM;
- b. failure to conduct remedial investigation, 17.56.604 ARM; and,
- c. failure to conduct remedial actions, 17.56.605 ARM.

As reflected by the above data, enforcement has not been necessary at the majority of the 3,817 LUSTs in Montana. Notices of violation issued by the Program were necessary at only 0.8% of the known releases. This overall compliance is credited to the availability of PTRCF funding, ability for the state to take unilateral corrective actions through the LUST Trust, and the collaborative approach taken by PRS case managers.

## 7. Enforcement Activities

Table 65. Number and status of the administrative and judicial enforcement actions that were initiated by the Department under the statutes administered by the Hazardous Waste Site Cleanup Bureau.

Statute	Total Caseload for FY99 – FY00 Biennium	Origin of Cases			Status of Cases on June 30, 2000 <sup>1</sup>								
		Continuing Cases From FY97 - FY98	Actions Requested During FY99	Actions Requested During FY00	Case Development	In Litigation	Referred Case	Vacated	Stayed	Suspended	Under Order	Withdrawn	Closed
Underground Storage Tank Act	2	2	0	0	0	0	0	0	0	0	2	0	0

<sup>1</sup>Case status explanations:

**Case Development** – Case is being developed in the Enforcement Division and/or Legal Unit. Some of the activities occurring include: (1) preparation and review of files and evidence, (2) preparation of administrative and judicial enforcement documents, and (3) preparation of penalty calculations.

**In Litigation** – Defendant and the department are engaged in pre-complaint settlement negotiations; e.g., a demand letter has been sent to the defendant, the defendant has been requested to stipulate to a draft administrative order, etc.

**Referred Case** – Case referred to another agency for case management.

**Vacated** – Case was vacated, either by mutual agreement or by the court, and is closed.

**Stayed** – Case in which the department refrains from enforcing an administrative order against a violator.

**Suspended** – Case that is discontinued temporarily or permanently but is not closed.

**Under Order** – Violator is subject to a legally-enforceable administrative or judicial order.

**Withdrawn** – Enforcement Request was withdrawn before case development began.

**Closed enforcement case** – Case is closed. The defendant has satisfied the terms of the settlement agreement or Order.

Table 66. Facts about the individual enforcement actions that were initiated during the biennium under the statutes administered by the Hazardous Waste Site Cleanup Bureau.

Statute <sup>1</sup>	Enforcement Request Date	Action Type	Status of Action	Company / Individual	County	Description of Violation	Penalty Assessed	Settlement Penalty
UST	05/19/99	Civil	Under Order	Don Novell dba Trailstar II	Dawson	Failure to investigate suspected petroleum release		
UST	03/03/99	Civil	Under Order	Melvin Nelson	Lake	Failure to investigate extent of petroleum release		

<sup>1</sup> UST = Montana Underground Storage Tank Act

## **Comprehensive Environmental Cleanup and Responsibility Act, 75-10-705**

### **1. Program Description**

The Site Response Section (SRS) utilizes CECRA to investigate and cleanup hazardous and deleterious substances. In 1989, the Montana Legislature passed the Comprehensive Environmental Cleanup and Responsibility Act (CECRA) for the investigation and cleanup of sites not addressed by federal Superfund. In Montana, the majority of these releases occurred at sites where mining, smelting, wood treating, railroad fueling and maintenance, petroleum refining, landfilling, and chemical manufacturing/storage activities were conducted. Historical waste disposal activities at these sites caused contamination of air, surface water, groundwater, sediments, and/or soils with hazardous or deleterious substances. This contamination has caused, or may cause public health impacts, such as contaminated drinking water and ecological impacts (such as loss of fisheries.)

Under CECRA, sites are ranked based on potential risks to public health and the environment. Because staff and financial resources are not sufficient to address the 211 sites in Montana, CECRA activities focus primarily on maximum and high priority sites. Low and medium priority sites are often addressed through the Voluntary Cleanup and Redevelopment Act (VCRA) (§75-10-730 *et seq.*).

Typically, DEQ first works with the potentially liable persons (PLPs) to obtain their cooperation in investigating and cleaning up the site. PLPs, working cooperatively with DEQ, conduct most site cleanups. If the PLPs are uncooperative, DEQ may initiate enforcement actions to obtain cleanup.

### **2. Activities and Efforts to Promote Compliance Assistance and Education**

Montana law provides several opportunities for PLPs to clean up contaminated sites under CECRA without enforcement activities. VCRA allows for voluntary clean up of sites or portions of sites through established procedures, so the property can be redeveloped without the use of notices and orders. VCRA is appropriate where cleanups can be accomplished in less than five years. The Controlled Allocation and Liability Act (CALA) (§75-10-742 *et seq.*) provides for proportionate liability where PLPs can complete cleanups and seek reimbursement of cleanup costs from the Orphan Share Fund for costs allocated to bankrupt or defunct persons. Other provisions of CECRA allow noticed PLPs to conduct proper and expeditious voluntary cleanup at their sites before DEQ issues orders.

SRS also conducts outreach to inform individuals and communities about VCRA opportunities, orphan share funding, and possible federal grants to cleanup contaminated sites. DEQ receives grant funding from the U.S. Environmental Protection Agency to conduct this outreach. The SRS also assists communities to secure state and federal grant monies to investigate and cleanup contaminated sites.

### **3. Size and Description of Regulated Community**

CECRA liability is strict, joint and several. CECRA provides exclusions to liability for people under certain conditions including: disposing of common household refuse, owning property above contaminated groundwater plumes, and owning 20 acres or less of residential property. The regulated community includes all citizens, businesses, corporations, and political subdivisions within the state, as well as persons conducting business, holding assets, or transporting materials through the state. Currently there are 211 CECRA sites; however, this list may not be comprehensive since new sites may be discovered at anytime. The portion of the population in compliance cannot be calculated for this law.

#### 4. Number, Description, Method of Discovery and Significance of Non-compliance

Contaminated sites are discovered through a variety of means, including: citizen complaints, construction/utility worker discoveries, environmental assessments, investigations at other contaminated sites, voluntary submittals, and other avenues.

Although 'non-compliance' is not applicable to CECRA, the following enforcement-like activities are reported for informational use.

Table 67. List of formal enforcement actions issued under CECRA.

Activity	7/1/98- 6/30/99	7/1/99- 6/30/00
Notice Letters	1	0
Unilateral Administrative Orders	4	1 amendment
Administrative Orders on Consent	0	0

Table 68. Status and number of complaints managed by the Enforcement Division during FY99-FY00 that are related to the Comprehensive Environmental Responsibility and Cleanup Act and abandoned mines.

Status	CECRA	Abandoned Mines
Active: under investigation by ENFD	1	0
Active: under investigation by program	1	1
Investigated and closed by ENFD	2	5
Investigated and closed by program	1	0
Referred to another agency	1	0
Enforcement action requested for resolution	0	0
Total	6	6

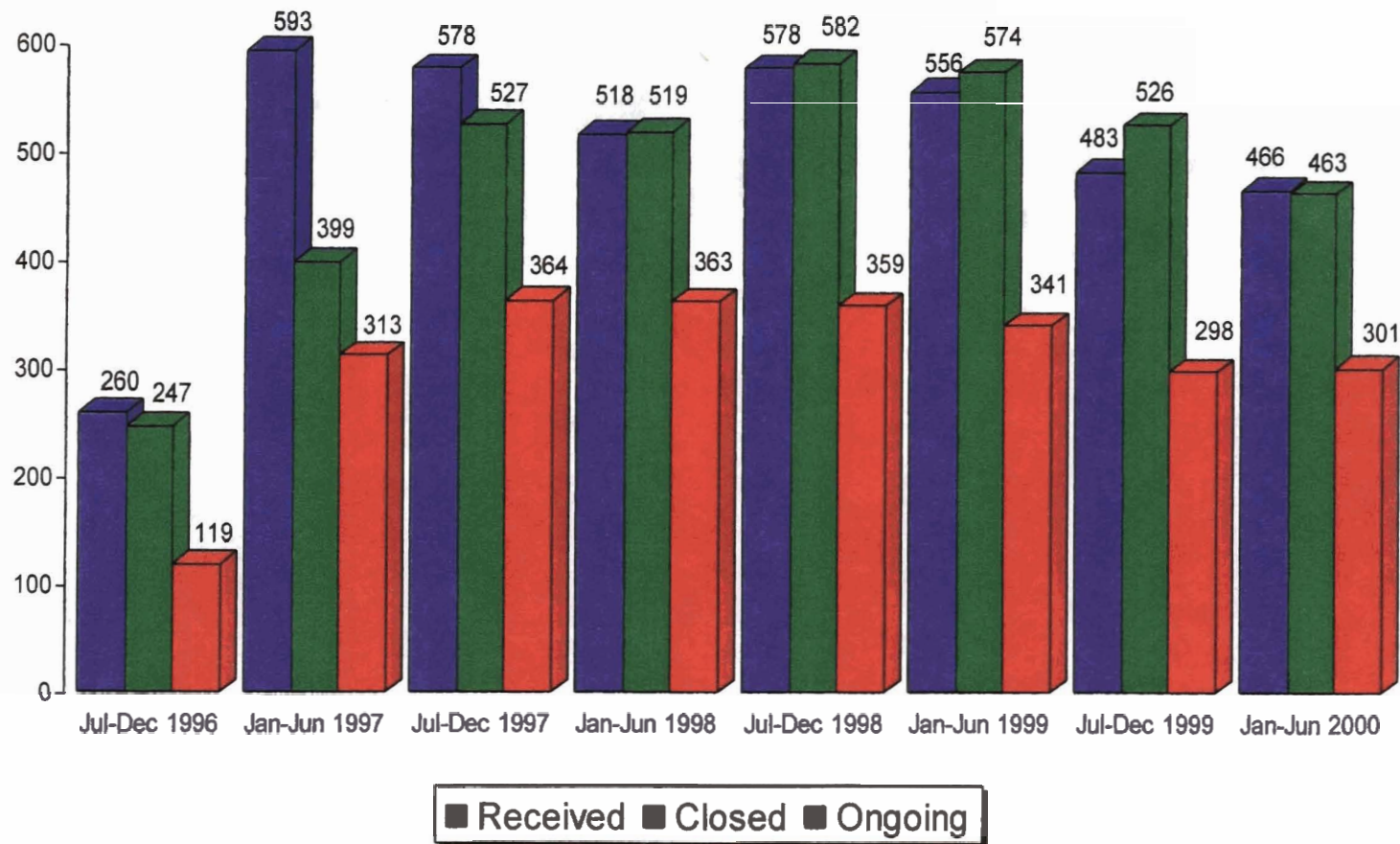
#### 5. Response to Non-compliances

Not applicable.

#### 6. Trends

This is the first reporting of these figures, so there are no historical data from which to ascertain trends.

Department of Environmental Quality  
Enforcement Division  
Complaints Managed July 1996 through June 2000



# Montana Department of Environmental Quality Enforcement Division Cases Managed July 1996 through June 2000

